

1 IN THE UNITED STATES DISTRICT COURT
 2 IN AND FOR THE DISTRICT OF DELAWARE

3 - - -

4 ATELIERS DE LA HAUTE-GARONNE (French : CIVIL ACTION
 Corporation) and F2C2 SYSTEMS S.A.S. :
 5 (French Corporation), :
 :
 6 Plaintiffs, :
 :
 7 v. :
 :
 8 BROETJE AUTOMATION-USA INC. (Delaware :
 Corporation), BROETJE AUTOMATION GMBH :
 9 (German Corporation), :
 : NO. 09-598-LPS
 10 Defendants.

11 - - -

12 Wilmington, Delaware
 13 Monday, April 7, 2014
 14 *Jury Trial - Volume A*

15 - - -

16 BEFORE: HONORABLE **LEONARD P. STARK**, U.S.D.C.J., and a jury

17 APPEARANCES: - - -

18 YOUNG CONAWAY STARGATT & TAYLOR, LLP
 BY: MELANIE K. SHARP, ESQ., and
 19 JAMES L. HIGGINS, ESQ.

20 and

21 KAYE SCHOLER, LLP
 BY: SCOTT G. LINDVALL, ESQ., and
 22 JEFFREY H. HOROWITZ, ESQ.
 (New York, New York)

23 and

24 Valerie J. Gunning Brian P. Gaffigan
 25 Official Court Reporter Official Court Reporter

1 APPEARANCES: (Continued)

2
3 KAYE SCHOLER, LLP
4 BY: PAUL I. MARGULIES, ESQ.
(Washington, District of Columbia)

5 and

6 KAYE SCHOLER, LLP
7 BY: MICHELLE MAREK, ESQ.
(Chicago, Illinois)

8 Counsel for Plaintiffs Ateliers De La
9 Haute-Garonne and F2C2 Systems S.A.S.

10 DRINKER BIDDLE & REATH, LLP
11 BY: JOSEPH C. SCHOELL, ESQ., and
TODD C. SCHILTZ, ESQ.

12 and

13 DRINKER BIDDLE & REATH, LLP
14 BY: PATRICK J. KELLEHER, ESQ.,
DARREN S. CAHR, ESQ., and
15 CARRIE A. BEYER, ESQ.
(Chicago, Illinois)

16 Counsel for Broetje Automation-USA Inc.
17 and Broetje Automation GmbH

18
19
20
21
22 - oOo -

23 P R O C E E D I N G S

24 (REPORTER'S NOTE: Jury trial proceedings were
25 held in open court, beginning at 8:44 a.m.)

1 THE COURT: Good morning, everyone.

2 (Counsel respond, "Good morning, Your Honor.")

3 THE COURT: First, let me start by having you
4 put your appearances on the record, please. Ms. Sharp, good
5 morning.

6 MS. SHARP: Good morning, Your Honor. On behalf
7 of the plaintiffs AHG, Melanie Sharp and Jim Higgins from
8 Young Conaway Stargatt & Taylor. The Court has also
9 previously met my colleagues from Kaye Scholer in New York,
10 Scott Lindvall.

11 MR. LINDVALL: Good morning, Your Honor.

12 MS. SHARP: Jeff Horowitz.

13 MR. HOROWITZ: Good morning, Your Honor.

14 MS. SHARP: And Paul Margulies.

15 MR. MARGULIES: Good morning.

16 THE COURT: Good morning. Welcome to all of
17 you.

18 MS. SHARP: I'm sorry, your Honor. Michelle
19 Marek is here as well.

20 THE COURT: Okay.

21 MS. MAREK: Good morning, your Honor.

22 THE COURT: Good morning.

23 MR. SCHOELL: Good morning, Your Honor. Joseph
24 Schoell from Drinker Biddle & Reath for defendants Broetje
25 Automation-USA and Broetje GmbH. I'm joined today by my

1 colleagues from the Chicago office of Drinker Biddle &
2 Reath, who you are familiar with: Patrick Kelleher.

3 MR. KELLEHER: Good morning, Your Honor.

4 MR. SCHOELL: Darren Cahr.

5 MR. CAHR: Good morning, Your Honor.

6 MR. SCHOELL: And Carrie Beyer.

7 MS. BEYER: Good morning, Your Honor.

8 THE COURT: Good morning.

9 MR. SCHOELL: And I should add, your Honor, that
10 Todd Schiltz of our office is also still working on the case
11 and may be appearing during trial as well.

12 THE COURT: That's fine. Okay. Thank you very
13 much. Welcome.

14 MR. SCHOELL: Thank you, your Honor.

15 THE COURT: Welcome to all of you as well.

16 So there are a few matters I wanted to put on
17 the record and raise at least one issue I need a little bit
18 of help with. And in case you're wondering, we're not
19 starting the clock yet. We'll start the clock and charge
20 somebody for time after I turn to you and ask you if you
21 have any new issues.

22 So first a few things for me. The voir dire we
23 docketed this morning and I think we sent in some hard
24 copies for all of you. The same thing with the preliminary
25 instructions. There was just that one. Well, I only recall

1 one objection which we had talked about at the pretrial
2 conference, which basically had to do with that preemption
3 issue, and I didn't think I needed to decide that issue for
4 purposes of getting through the preliminary instructions.
5 We'll take up that issue substantively when we talk about
6 disputes on the final instruction, but I just deleted for
7 purposes of the preliminary instructions the extra language
8 that was proposed by the plaintiff.

9 We added in some of our standard instructions
10 that this is a timed trial. I think it helpful for the jury
11 to know that, and also to let them know what sidebars are in
12 case we do have any, and to let them know they can signal us
13 if they need a somewhat urgent break at times that are not
14 otherwise scheduled.

15 We received the copy of the new patent video,
16 the FJC video that you all somewhere agreed we will play
17 along with the sample patent, and we will be passing those
18 out later today to the jurors.

19 Your letter on how to do Rule 50 motions was
20 very helpful. It appeared to me that you were in agreement,
21 and I'm in agreement with your agreement. So the way we
22 will do that is you will just make oral motions during the
23 trial. You will note that promptly at the appropriate time
24 but you won't even argue them orally at that time. You will
25 argue them at a convenient time to all of us probably at a

1 break or at the end of the day, and then you have a chance
2 to follow-up in writing with up to three pages according to
3 the time limits that you provided yourselves.

4 Is there any question about the Rule 50 practice
5 for this case?

6 MR. LINDVALL: No, Your Honor.

7 MR. KELLEHER: No, Your Honor.

8 THE COURT: Okay. In terms of how to do
9 impeachment by the prior testimony, again, you putting your
10 heads together was helpful. You didn't quite reach
11 agreement on that.

12 I'm going to adopt the plaintiffs' proposal in
13 this trial for how to do impeachment by prior testimony.
14 And that means, first of all, you did agree on this. You
15 can use the video or you can use the text of the prior
16 testimony, and you must identify, of course, the page and
17 the line number that you are using, but then once you have
18 done that, you can go ahead and continue to read it or play
19 it, whatever the case may be, without waiting for objections.

20 If the other side does have an objection, for
21 instance, as not impeaching, not inconsistent, not
22 incomplete, wait until after the testimony is read and
23 then you can note for the record that I have this objection.
24 That preserves the objection for my purposes, and the
25 objection is noted, but obviously the testimony will be

1 read or played and I'm not going to do anything about it in
2 the course of the trial. Then when you get to redirect, you
3 are free to try and, from your perspective, fix things by
4 reading or playing whatever additional testimony you think
5 is necessary to put what happened on cross in the proper
6 context before the jury.

7 Are there any questions about how we'll do that?

8 MR. LINDVALL: No, Your Honor.

9 MR. KELLEHER: No, Your Honor.

10 THE COURT: Here is where I need a little bit of
11 help. Sequestration of fact witnesses. There was a dispute
12 also in that same letter about whether we should sequester
13 fact witnesses during opening statement. I think it's AHG
14 wants to sequester and Broetje does not. If that is still
15 AHG's request, let me hear from you briefly as to why I
16 should do that.

17 MR. LINDVALL: Your Honor, I believe the
18 witnesses should be sequestered in opening for the same
19 reasons they are sequestered in a situation where a witness
20 is testifying because I believe both of us in opening will
21 be referring to evidence that the jury is going to be
22 hearing, and there may be testimony that the jury is going
23 to be hearing from fact witnesses.

24 Thank you.

25 THE COURT: Okay.

1 MR. KELLEHER: Your Honor, our argument is
2 pointed to Rule 615 where it speaks about excluding
3 witnesses only so they cannot hear the testimony of other
4 witnesses which won't be occurring in the opening statements
5 so we don't think there is any possibility of polluting the
6 witness knowledge pool.

7 THE COURT: All right. Well, I'm going to stick
8 for now to the letter of Rule 615. I'm not going to exclude
9 anybody or sequester anybody from the opening statements.
10 It's not evidence, it's not argument. It's just an outline
11 as to what you expect the evidence to be, and I'm not
12 persuaded that it's necessary to sequester witnesses from
13 openings. That is my ruling there.

14 We had the letters on equitable tolling. As I
15 understand it, there is really nothing that I need to do
16 on this at this point. We'll address the merits of the
17 equitable tolling question in context of post-trial
18 proceedings. And I don't anticipate instructing the jury
19 or asking the jury any questions on the verdict sheet about
20 equitable tolling. That's what I think we had agreed on in
21 the pretrial conference, and I don't think anything in the
22 subsequent letters changed that.

23 Is there any question about that?

24 MR. LINDVALL: No. I believe that is correct,
25 Your Honor. One clarification, though. We'll obviously

1 have to put in evidence to support our equitable tolling
2 claim here in the trial.

3 THE COURT: Right, but it will just come in
4 looking like other evidence.

5 MR. LINDVALL: Correct, Your Honor.

6 THE COURT: Is there any questions about that?

7 MR. KELLEHER: Your Honor, because of the nature
8 of the evidence that they're hoping to put in concerning
9 equitable tolling, we actually object heavily to the
10 substantive evidence they want to put in. We have
11 objections to that with regard to their first witnesses.

12 THE COURT: Okay. Then we'll take that up in
13 a moment when we come to it. So as a general matter, Mr.
14 Lindvall is correct, but subject to specific objections and
15 depending how we go on the specific objections, we may have
16 to revisit the general question.

17 MR. KELLEHER: That's correct, Your Honor.

18 THE COURT: All right. The only other thing
19 that I think is pending in front of me right now is the
20 objections to the deposition testimony. I'm not ready to
21 give you the rulings on that yet. I'll try to do that
22 before the end of the day today. You didn't anticipate
23 even best case playing that today, I don't think. Is that
24 correct?

25 MR. LINDVALL: I believe so, Your Honor. Best

1 case, we'll be playing those videos, two videos at the very
2 end of the day.

3 THE COURT: Oh. Did you think you might get to
4 it at the end of the day?

5 MR. LINDVALL: It depends on how quickly we
6 moved today.

7 THE COURT: All right.

8 MR. LINDVALL: We have one witness, and we'll
9 play the videos.

10 THE COURT: You won't be playing it before the
11 lunch, I'm fairly confident.

12 MR. LINDVALL: No, Your Honor, we would not.

13 THE COURT: I'll try to get you a ruling by the
14 end of the lunch break, if I can.

15 All right. Then in terms of Broetje's corporate
16 representative, who have you elected to have?

17 MR. KELLEHER: Your Honor, Mr. Ken Benczkowski
18 who is the President of Broetje USA.

19 THE COURT: Fine. Thank you very much. Do you
20 want to say anything about that?

21 MR. LINDVALL: No, Your Honor. We're going to
22 have Philippe Bornes as our representative.

23 THE COURT: Thank you. And I didn't mean to
24 slight Mr. Bornes. I just know there was no dispute with
25 respect to him.

1 MR. LINDVALL: Thank you.

2 THE COURT: All right. That was all I had on my
3 list. So we are now going to start the clock, and I'll see
4 if anybody has any issues that they wanted to raise with us
5 this morning. First from the plaintiff.

6 MR. LINDVALL: Your Honor, we have two issues
7 with their opening slides, two objections to their opening
8 slides.

9 THE COURT: Okay.

10 MR. LINDVALL: And that we did not resolve last
11 night. The first one is their Slide No. 34.

12 Their Slide No. 34, this is a part of some claim
13 language. And they, I know they changed this, but what
14 they're doing, they're comparing a drawing in the patent to
15 the accused product. And I believe it's improper from a
16 matter of patent law to compare a drawing to the accused
17 product and somehow argue infringement.

18 The proper way of doing that, of course, is the
19 claim language as construed by the Court with the accused
20 product. Therefore, we object to the use of this slide.

21 THE COURT: All right. And there is only one
22 other that you objected to?

23 MR. LINDVALL: Yes.

24 THE COURT: Let's hear that one, too.

25 MR. LINDVALL: Slide 40.

1 Slide 40, they represent this is F2C2, which is
2 our tube design, and this actually the sketch made
3 internally by their in-house legal department of what they
4 thought our product looked like. So we believe it's a
5 misrepresentation that this sketch represents the F2C2 tube
6 design. It did not come from our documents, it came from
7 the sketch at one of their in-house lawyers or people made
8 of what they thought our tube design is. So we're objecting
9 to that based on his mischaracterization of what our tube is.

10 THE COURT: Okay.

11 MR. LINDVALL: Thank you.

12 THE COURT: Thank you. From defendants.

13 MR. KELLEHER: Your Honor, with regard to Slide
14 34, we're not making a noninfringement argument that the
15 only thing that can constitute "substantially equal" is what
16 is shown in that Figure 2 from the patents. That is merely
17 one example of that. We're not seeking a noninfringement
18 determination based upon that, so the accusation we're
19 trying to mislead the jury right up in front on that isn't
20 accurate.

21 THE COURT: You understand the jury will be
22 instructed that for purposes of infringement they need to
23 compare the claim language to the accused products?

24 MR. KELLEHER: Of course.

25 THE COURT: You are not going to argue anything

1 inconsistent with that, are you?

2 MR. KELLEHER: No.

3 THE COURT: And Slide No. 40.

4 MR. KELLEHER: Then, Your Honor, with regard to
5 Slide No. 40. These are merely the two images in the actual
6 document that was sent to Dr. Budach, who gave the opinion
7 of counsel of no infringement. And this was sent to him in
8 2005 saying these are two tube shapes, and they asked his
9 advice on it. So this is merely what is coming out of the
10 letter. If they want to somehow put in evidence that he was
11 shown an incorrect slide, they'll be able to do that.

12 THE COURT: But you anticipate the evidence of
13 the opinion of counsel is coming in at trial; correct?

14 MR. KELLEHER: Yes, Your Honor.

15 THE COURT: And you expect the testimony will be
16 that these two images were part of what that attorney based
17 his or her opinion on?

18 MR. KELLEHER: Yes. They were included in an
19 e-mail sent to him.

20 THE COURT: All right. Thank you very much.
21 Do you want to reply?

22 MR. LINDVALL: No, Your Honor.

23 THE COURT: All right. I'm going to overrule
24 both objections. I'm confident in the context of the whole
25 trial, this will not be unduly prejudicial or unfairly

1 confusing or in any way unfair to the plaintiff. I think
2 both of these are probative.

3 The jury will be properly instructed on the law,
4 for instance, that you can't find infringement simply based
5 on a drawing in the patent. That it's the claims that
6 determine the scope of the patent protection. And that
7 largely goes to 34 and 40 given what has been represented
8 about the source of those drawings and the evidence we're
9 likely to hear about it. Again, I think it's probative and
10 not unfairly prejudicial to the plaintiff.

11 Are there any other issues from the plaintiffs?

12 MR. LINDVALL: No, Your Honor.

13 THE COURT: Okay. What about from the
14 defendants?

15 MR. KELLEHER: Your Honor, we don't have
16 objections to the demonstrative slides that the plaintiffs
17 are planning to use on their opening. Our objections are
18 with regard to two trial exhibits they were planning to use.

19 THE COURT: Okay.

20 MR. KELLEHER: And the first one, Your Honor, is
21 the English language translation of the most recent French
22 appellate court judgment where, from deposition testimony,
23 it appears they want to read the translation of the French
24 court finding that we supposedly are selling an identical
25 cassette into the record. And we would think, Your Honor,

1 that this is getting into satellite litigation over what has
2 happened in Europe.

3 There have been five decisions from five
4 different courts in Europe now. Four have ruled for my
5 client, one has ruled for my opponent. We haven't intended
6 to be reading English translations of our victories in
7 Europe into the record. We don't think they should be doing
8 it here, especially when the only purpose it seemed to be to
9 sway the jury on the merits the their substantive trade
10 dress claim.

11 THE COURT: So do you object to its admission as
12 well as to the reading that you anticipate them reading?

13 MR. KELLEHER: Here is what we conceive of, Your
14 Honor. As you know, there have been undertaken a redesign
15 of the Broetje cassette to what we will call the red
16 cassette. We don't object to the jury knowing of the reason
17 we did that is that we lost a case in the French Court of
18 Appeals and now we have to change if we want to keep selling
19 in France.

20 But we would stop it right there. We wouldn't
21 get into the merits what happened in France, the same way we
22 don't intend to get into the four cases that we won. And
23 then the jury would understand why it is we're making this
24 change. It's not just in the ordinary course of business.
25 We don't think that the jury should be hearing the words of

1 the French court.

2 THE COURT: All right. So what would be wrong
3 with doing it the other way and saying all five judgments or
4 opinions are fair game and put them in, if you want to?

5 MR. KELLEHER: Because, Your Honor, I think that
6 would be a waste of time. You would be hearing a lot of
7 decisions from Judges in Europe that aren't binding on this
8 jury here. In France, it doesn't matter if, under their
9 law of unfair competition, selling something that looks
10 identical would be a violation of their law. That is not
11 the law in the United States. You have got to have a whole
12 bunch of other elements to satisfy a trade dress claim in
13 the United States, and it's only going to improperly sway
14 the jury, the same way I can read the German court decision
15 finding invalid the patents. I don't intend to do that
16 because it's not especially probative for the jury here.

17 THE COURT: All right. So that's the first
18 issue?

19 MR. KELLEHER: It is, Your Honor. We wouldn't
20 like the text read or the language paraphrased basically in
21 the case.

22 THE COURT: Well, I think it is an objection to
23 the admission of the actual judgment because once it's in,
24 we can't control what the jury is going to do.

25 MR. KELLEHER: Agreed, Your Honor.

1 The second substantive exhibit, Your Honor, is
2 they want to put in a letter that was sent to my client in
3 2005 or 2006 by the French lawyers to my clients in Germany
4 accusing them of various things such as infringing the
5 European patent and accusing them of breaching the supposed
6 contract that existed between AHG and my client.

7 Your Honor, you ruled on our Motion No. 1 that
8 there can be no accusation or insinuation that we breached
9 any contract with AHG, so we think that exhibit is already
10 barred by your first ruling on the motion in limine.

11 THE COURT: Remind me. When did that first
12 motion in limine come up?

13 MR. KELLEHER: You decided it at the first
14 pretrial conference in 2011.

15 THE COURT: All right. Thank you very much.
16 Let's hear from plaintiffs.

17 MR. LINDVALL: Your Honor, there's one very
18 important thing that wasn't brought up, is that you already
19 decided the issue on the foreign law. We, AHG, had brought
20 up in motion in limine number one that two years ago to try
21 to preclude the defendants from bringing in the German and
22 French decisions which at that time were both favorable to
23 them, and for the same reasons he doesn't want them in now,
24 we didn't want them in back then.

25 We made these argues. Mr. Kelleher made his

1 arguments, and Your Honor ruled in their favor and said, and
2 I can cite, it's at DI 334, page 76: "The foreign law that
3 defendant wishes to cite does have at least some limited
4 relevance. The jury will decide how much weight to give
5 that evidence and a Court will, if asked, instruct the jury
6 on the nonbinding nature of foreign law. The relevance,
7 though minimal, relates to the willfulness claim."

8 Now, let me address that for a moment. That
9 still is true. There's willfulness on trade secret, I meet
10 trade dress and there's willfulness in the patent claim.
11 There's also relevance with the decisions relating to the
12 equitable tolling claim. So the relevance is still there,
13 and the judge, and Your Honor has already ruled on specific
14 things. I believe from the minimal standpoint, they're
15 judicially estopped to come in here and argue the exact
16 opposite.

17 THE COURT: So in your view, does that ruling go
18 to what are now five separate European decisions?

19 MR. LINDVALL: Yes. We've gone from four to
20 five, because what happened, one more additional French
21 decision that came out in 2012.

22 THE COURT: And in your view, then, if I adhere
23 to the ruling I gave previously, all five are fair game to
24 be admitted and read from and used in any proper way at
25 trial?

1 MR. LINDVALL: Yes, Your Honor. In fact, they
2 just recently put on the exhibit list a German decision,
3 which invalidated our patent. And --

4 THE COURT: And you would be in support then of
5 me instructing the jury about the nonbinding nature and that
6 the legal standard may or do differ, and things such as
7 that?

8 MR. LINDVALL: That's correct, Your Honor.
9 That's what you had suggested to me two years ago, when I
10 was on the other side. You said, well, we can take care of
11 that through a proper jury instruction about the nonbinding
12 nature and we would propose one.

13 THE COURT: Okay. That's the first issue. How
14 about let's address the second issue.

15 MR. LINDVALL: The second issue is the same
16 thing except it's a little bit different. Here we have a
17 document, which is really part of the story, where you move
18 along in a timeline, one of the things that happened was we
19 discovered that they were, had copied our cassette and they
20 were selling it without our knowledge. Our lawyers sent to
21 them a basically cease and desist letter. The cease and
22 desist letter for other reasons I believe is relevant to
23 marking because that is one of the defenses they have, is we
24 didn't mark our product. And we believe that that serves
25 proper written notice. What they are trying to do is

1 eliminate part of the story, and I think to keep the
2 complete story and have the jury understand what happened
3 between the parties, that needs to go in.

4 We are not going, I'm not going to get up in
5 closing or opening and say they breached the contract,
6 because you ruled on that in the MIL. But you did say both
7 parties could tell what they understood each other's
8 obligations were under the agreement.

9 THE COURT: And I have not -- if I've seen the
10 letter, it was years ago. I don't recall it.

11 Is there a way that it could be redacted such
12 that any insinuations or allegations of breach of contract
13 could be eliminated?

14 MR. LINDVALL: Yes, Your Honor, we could do
15 that.

16 THE COURT: Because you are not going to be
17 referring to those portions of the letter in any event.

18 MR. LINDVALL: No. I had no plans to refer to
19 those parts of the letter.

20 THE COURT: Okay. Anything else?

21 MR. LINDVALL: No, Your Honor.

22 THE COURT: Again, reply, if you'd like.

23 MR. KELLEHER: Yes, Your Honor. Your ruling on
24 the motion in limine back in 2011 said that there was
25 limited relevance to one of the German Court decisions that

1 had found Broetje not to infringe in Germany, because that
2 tended to show that Broetje had a good-faith reason to rely
3 upon the advice of counsel of noninfringement because there
4 was an agreement between counsel and the Court and that was
5 the only purpose for which we were going to use it. We were
6 not going to elaborate on exactly what had happened. We
7 were not going to read the German Court decision into
8 evidence.

9 As for willfulness, Your Honor, it has nothing
10 to do with willfulness. The judgment they want to read has
11 nothing to do with willfulness on the patents because the
12 patents had already expired.

13 With regard to willful trade dress,
14 infringement, this was a decision in 2010, I believe, or
15 2000, I'm sorry, yes. 2010 or 2011, and -- no, I'm sorry.
16 The appellate court decision was 2012. That had nothing to
17 do with whether or not my client adopted the supposed trade
18 dress in 2004. It was wilful. You can't go back six years
19 in time in this court judgment and somehow say there was
20 willfulness.

21 THE COURT: That was the first.

22 MR. KELLEHER: That was the first, Your Honor.

23 With regard to the letter, it can't prove
24 marking, Your Honor, because it does not mention either of
25 the two U.S. patents by number, which is required. And they

1 only mention the European patent. And as you mentioned,
2 once the letter comes into evidence, the jury will see it
3 and be able to do anything they want with it.

4 THE COURT: And what about redacting it?

5 MR. KELLEHER: I have not thought carefully
6 about redacting, Your Honor. I looked over it. I will
7 concede it's a possibility that any accusation of breach of
8 contract could be redacted out.

9 THE COURT: All right. Thank you.

10 Well, on the first objection, I'm going to
11 overrule the objection. I'm going to allow the five
12 decisions. I understand there are five now decisions from
13 Europe to come in. If the parties wish to do that, there
14 should be no effort to lead the jury into thinking that the
15 legal standards are the same or identical or anything other
16 than what they actually are in France or Germany as the case
17 may be, and I will want to instruct the jury of that reality
18 at some point in the case, at least including final jury
19 instructions. I don't recall if you've proposed something
20 on that point already. If you haven't, then I'm directing
21 you to meet and confer and submit something sometime this
22 week that I may consider so that there is no chance of the
23 jury being misled into thinking they must do whatever
24 another Court applying different law may have done. But
25 with that protection and consistent with what I am reminded

1 in my ruling years ago, I'm going to overrule the
2 defendants' objection.

3 On the second issue, I'm going to overrule the
4 objection for now, but it's without prejudice to the
5 defendant renewing that objection after they take a look at
6 whatever the proposed redaction is from the plaintiff. I
7 don't want the jury to see insinuations or allegations of
8 breach of contract, which I'm reminded I ruled shouldn't be
9 done. Plaintiff doesn't intend to do that. You'll need to
10 show defendant sort of proof of that through the proposed
11 redacted version of the letter and make sure that defendants
12 get a chance to see that before we call that witness to the
13 stand. If there remains an objection, then go ahead and
14 raise it again before we call that witness to the stand. I
15 will make the final determination then.

16 Go ahead.

17 MR. LINDVALL: One question, Your Honor. I
18 planned on using that document in my opening statement, but
19 I'm not using any portion to talk about the breach of
20 contract. I just want to make sure it would be okay to use
21 it.

22 THE COURT: Do you have a slide or something?

23 MR. LINDVALL: It's just the actual document,
24 because the only part I was going to show, it does not say
25 anything about breach of contract. It talks about

1 infringement.

2 THE COURT: All right. Well, show counsel the
3 portion you intend to show to the jury. Assuming it does
4 not reference breach of contract, I will let you do it,
5 though if there's still an objection to it, go ahead and
6 put it on the record at some point before we get to
7 openings.

8 MR. LINDVALL: Thank you, Your Honor.

9 THE COURT: All right. Any question about any
10 of that?

11 MR. KELLEHER: No, Your Honor.

12 THE COURT: All right. Any other issues from
13 defendant?

14 MR. KELLEHER: Deposition designations, Your
15 Honor, that we'll resolve later, on I suppose.

16 THE COURT: The ones I already have in front of
17 me?

18 MR. KELLEHER: That's correct.

19 THE COURT: All right. Has there been any
20 change to the universe of what I need to decide?

21 MR. KELLEHER: I don't believe so, Your Honor.

22 THE COURT: All right. Okay. Well, we are
23 going to take a look at those and try and get you a ruling
24 by the end of the lunch break.

25 Anything else?

1 MR. LINDVALL: No. I will note for you, make
2 your job easy, since you've ruled on the MIL, you'll see the
3 objections on part of the deposition designations, the same
4 argument on the MIL, so that will make your life a little
5 easier.

6 THE COURT: It may, it may.

7 MR. LINDVALL: Thank you, Your Honor.

8 THE COURT: Okay. All right. I don't believe
9 the jury pool will be available until 9:30. The patent
10 video, we're going to need to rely on you all to play that
11 at the point in which I get to that in my instruction. I
12 know you provided a copy to us, but you are prepared,
13 somebody is prepared to play it? Hands are being raised.
14 That's a yes. Correct?

15 MR. LINDVALL: Yes.

16 THE COURT: Okay. All right. All right. Well,
17 we'll be in recess for a little bit.

18 MR. LINDVALL: Thank you.

19 (Short recess taken.)

20 THE COURT: Good morning, everyone. Welcome,
21 ladies and gentlemen, of our jury panel. I am Leonard
22 Stark. I'm a United States District Judge here in the
23 District of Delaware. I'm the judicial officer who has been
24 selected to preside over this trial.

25 I want to thank all of you for being here this

1 morning and ask probably not for the last time that you give
2 us your patience and your attention today. Selecting a jury
3 can be a somewhat lengthy process. It's likely to take up
4 much of the day, but please just understand that you are
5 very important to the functioning of our system and it's
6 important that we follow the appropriate procedures.

7 The first step in that process is for you all to
8 take an oath and I will turn to my deputy, Mr. Looby, to
9 administer the oath.

10 (Jury panel sworn.)

11 THE COURT: Thank you. Thank you for that.

12 So the first step of this process is called voir
13 dire, and the way voir dire will work is, I'm going to read
14 you a series of questions here in the courtroom. It is 28
15 questions. They are all written in a yes/no format. What I
16 ask for you to do is to try to keep in your head just a
17 sense as to whether you have answered yes to any of my
18 questions. You need not stand, you need not raise your
19 hand. It's fine if you can't remember the number of the
20 question that you answered yes to. Just try to keep track
21 of whether you have a "yes" answer to any of the questions.
22 If you do, then after I've gone through the questions, I
23 will meet with you one at a time in my jury room, just right
24 behind where I'm seated, and we'll have a short discussion,
25 the attorneys and me, about what you answered yes to. So

1 with that, let me begin to read the voir dire questions to
2 you.

3 This is a case about rivet dispensing technology
4 used in large scale manufacturing processes, including the
5 assembly of airplanes. Broetje Automation-USA Inc. and
6 Broetje Automation GmbH are accused of infringing patents
7 owned by Ateliers de la Haute-Garonne and F2C2 Systems
8 S.A.S., and also of unfair competition, trade dress
9 infringement, and intentional interference with prospective
10 economic advantage.

11 Question number 1 is: Do you have any personal
12 knowledge about this case, or have you heard it discussed,
13 or have any opinions about it?

14 Question 2. Are you, a relative, or a close
15 friend personally acquainted with any officer, director, or
16 employee of the plaintiffs at Lear de la Haute-Garonne or
17 F2C2 Systems S.A.S.?

18 Three. Have you, a relative or a close friend
19 ever done business with the plaintiffs Ateliers de la
20 Haute-Garonne or F2C2 Systems S.A.S.?

21 Question 4. Are you, a relative or a close
22 friend personally acquainted with, or ever been represented
23 by the plaintiffs' attorneys -- the law firm of Young
24 Conaway Stargatt & Taylor, LLP and Kaye Scholer LLP, or the
25 following individual attorneys:

1 Melanie K. Sharp, James L. Higgins, Samantha G.
2 Wilson, Scott G. Lindvall, Jeffrey H. Horowitz, Paul I.
3 Margulies, Michelle Marek, Boris M. Herzi.

4 Question 5. Have you, a relative or a close
5 friend ever used products sold by the plaintiffs at Lear de
6 la Haute-Garonne or F2C2 Systems S.A.S.?

7 Question 6. Have you, a relative or a close
8 friend ever done business with the defendants Broetje
9 Automation-USA, Inc., Broetje Automation GmbH, CLAAS Group,
10 or Deutsche Beteiligungs AG?

11 Question seven. Are you, a relative or a close
12 friend personally acquainted with, or ever been represented
13 by the defendants' attorneys -- the law firm of Drinker
14 Biddle & Reath LLP, or the following individual attorneys:

15 Todd S. Schiltz, Joseph C. Schoell, Darren S.
16 Cahr, Patrick J. Kelleher, Carrie A. Beyer.

17 Question 8. Have you, a relative or a close
18 friend ever used products sold by the defendants Broetje
19 Automation-USA Inc. or Broetje Automation GmbH?

20 Question 9. Do you, a relative or a close
21 friend own stock or have any financial interest in Broetje
22 Automation-USA Inc. or Broetje Automation GmbH, CLAAS Group,
23 or Deutsche Beteiligungs AG?

24 That was 9. Let's make this 9B. Are you, a
25 relative or close friend personally acquainted with any

1 officer, director, or employee of the defendant Broetje
2 Automation-USA, Inc., Broetje Automation GmbH, CLAAS Group,
3 or Deutsche Beteiligungs AG?

4 Question 10. Are you, a relative or a close
5 friend personally acquainted with any of the following
6 individuals who might appear as witnesses in this case:

7 And my apologies. I'm going to butcher a lot of
8 these names. I will try to spell those for you:

9 Jean-Marc Auriol, that's A-u-r-i-o-l. Pierre
10 Auriol, A-u-r-i-o-l. Ken Benczkowski,
11 B-e-n-c-z-k-o-w-s-k-i. Dominique Blanc. Phillippe Bornes,
12 B-o-r-n-e-s. Thomas W. Britven. Tim Brown. Dr. Steffen
13 Budach, B-u-d-a-c-h. Andreas Ditsche, D-i-t-s-c-h-e.
14 Douglas Ellis. Pierre-Alain Girard. Dominique Hage,
15 H-a-g-e. Gerhard Holtmeier, H-o-l-t-m-e-i-e-r. Heiner
16 Holzer. Dr. Harri S. Kytomaa, K-y-t-o-m-a-a. Dr. James
17 Langenfeld. Michael Lawrence. Yvan Lemelin. That's
18 Y-v-a-n, the last name, L-e-m-e-l-i-n. Bill Mangus. Holger
19 Maylander. Pascale Mazouer, M-a-z-o-u-e-r. Francoise
20 Montsarrat. Dr. Axel Peters. Philippe Prat. Robert Reno.
21 Patrice Vellvehi, V-e-l-l-v-e-h-i.

22 That was Question 10 about witnesses.

23 Question 11: Have you, a relative or a close
24 friend ever served as a juror?

25 Question 12. Have you, a relative or a close

1 friend ever been a plaintiff or a defendant in a civil
2 lawsuit?

3 Question 13. Have you, a relative or a close
4 friend ever testified in court or at a deposition?

5 Question 14. Have you, a relative or a close
6 friend ever had any experience with patents, patent law,
7 patented technology, trademarks, trademark law, or the
8 United States Patent and Trademark Office?

9 Question 15. Do you have any beliefs or
10 feelings concerning patents or trademarks, and the efforts
11 to enforce patents and trademarks, that might make you
12 biased or prejudiced for or against such enforcement?

13 Question 16. Do you have any opinions or
14 feelings about whether the U.S. patent system, which grants
15 exclusive rights to inventors for their inventions, helps or
16 hurts society?

17 Question 17. Do you have any opinions about
18 whether it would be right or wrong for a person or a company
19 to profit from an invention?

20 Question 18. Do you, a relative or a close
21 friend, have any special education, training or experience
22 in mechanical engineering, product design, or manufacturing?

23 Question 19. Have you or a family member had
24 any legal education or training?

25 Question 20. Do you have any particular

1 feelings about individuals or companies from outside of the
2 United States, specifically France or Germany, that would
3 impair your ability to serve as a juror and make factual
4 determinations in the context of this case?

5 Question 21. Do you speak French or German?

6 Question 22. Would it bother you that some
7 witnesses may need to testify using a translator?

8 Question 23. Have you, or a relative or close
9 friend, ever worked for or done business with Gemcor, Kuka,
10 K-u-k-a, ElectroImpact, Boeing, Spirit, Vaught, V-a-u-g-h-t,
11 Dassault, D-a-s-s-a-u-l-t, Airbus, Huck, Bombardier,
12 B-o-m-b-a-r-d-i-e-r, Embraer, E-m-b-r-a-e-r, Gulfstream or
13 any other aircraft manufacturer or parts or tooling
14 provider?

15 And question 23 was have you, or a relative or
16 close friend, ever worked for or done business with any of
17 those companies?

18 Question 24. Do you, or a relative or close
19 friend, have any experience with or knowledge of riveting
20 technology, airplanes or assembly line manufacturing, or the
21 use of riveting technology in manufacturing?

22 Question 25. Have you or a family member had
23 any legal education or training?

24 Question 26. On most days, jurors will be
25 expected to sit from 9:00 in the morning until 4:30 in the

1 evening. There will be a lunch break and a break in the
2 morning and a break in the afternoon. Trial is expected to
3 be completed by this Friday, April 11. Does this schedule
4 pose any substantial hardship for you?

5 Question 27. Do you have any special
6 disability, or personal issue, or medical condition that
7 would make it difficult or impossible for you to serve as a
8 member of the jury in this case, including the use of
9 medication, hearing loss, or any other issue that you
10 genuinely believe would interfere with your ability to serve
11 or prevent you from serving as a member of the jury in this
12 case? And, finally,

13 Question 28. Is there any other matter which
14 you believe should be called to the Court's attention as
15 having some bearing upon your qualifications or ability to
16 sit as a juror, or which you think may interfere with or
17 prevent you from rendering a fair and impartial verdict
18 based solely on the evidence and my instructions as to the
19 law?

20 That completes the 28 voir dire questions. I
21 will now return to my juryroom along with counsel and my
22 staff will bring you in one by one if you have a "yes"
23 answer to any of those questions.

24 We will be in recess.

25 (Brief recess taken.)

1 discussing involvement in a lawsuit. Currently I am with an
2 insurance company.

3 THE COURT: Okay. Is that, do you work for an
4 insurance company?

5 A JUROR: I do not.

6 THE COURT: So it's a personal lawsuit?

7 A JUROR: It is.

8 THE COURT: Okay. And tell us which court that
9 is in.

10 A JUROR: Currently we have a deposition. I
11 unfortunately can't tell you. My husband was involved in an
12 accident two years ago, hit by a drunk driver. So that is
13 ongoing.

14 THE COURT: I'm sorry about that.

15 A JUROR: Thank you.

16 THE COURT: And it's actually in litigation?

17 A JUROR: It is currently.

18 THE COURT: Have you been deposed?

19 A JUROR: I've been through one deposition.

20 THE COURT: Okay. And the case is at least
21 headed towards trial at this point?

22 A JUROR: Yes. Yes. We did schedule it July
23 2015.

24 THE COURT: It's here in Delaware?

25 A JUROR: Yes.

1 THE COURT: And have you heard of any of the law
2 firms I mentioned?

3 A JUROR: No, I have not.

4 THE COURT: Were there other things that you
5 answered "yes" to?

6 A JUROR: The only other item about legal
7 education or that. I certainly have taken courses, business
8 law. It is probably not that relevant but I did work for an
9 attorney one summer about 2001, real estate attorney.

10 THE COURT: Was that here in Delaware?

11 A JUROR: Yes, Gerald Dixon. He used to be
12 located, he is retired, on King Street.

13 THE COURT: And you took a business law course
14 or courses?

15 A JUROR: Yes. No, just two. Two business law
16 courses.

17 THE COURT: Was that prior to that employment?

18 A JUROR: Yes.

19 THE COURT: Here in Delaware also?

20 A JUROR: No, actually at a university in
21 Philadelphia.

22 THE COURT: All right. Is there anything else?

23 A JUROR: No, that's it.

24 THE COURT: Let me see if the lawyers have any
25 else for you. First from the plaintiffs.

1 MS. SHARP: No, we don't, Your Honor.

2 THE COURT: The defendants?

3 MR. SCHOELL: No.

4 THE COURT: Okay. Thank you very much. You can
5 step out.

6 (Jury left juryroom.)

7 THE COURT: Any motion?

8 MS. SHARP: No motion.

9 THE COURT: Any motion?

10 MR. SCHOELL: No.

11 MR. KELLEHER: No motion.

12 (Juror entered juryroom.)

13 THE COURT: Good morning.

14 A JUROR: Good morning.

15 THE COURT: Have a seat, please.

16 What is your juror number?

17 A JUROR: 16.

18 THE COURT: Christopher Collins.

19 A JUROR: That's me.

20 THE COURT: What did you answer "yes" to?

21 A JUROR: Several of them. I'm a co-owner of an
22 industrial metrology quality control company.

23 THE COURT: Was it industrial?

24 A JUROR: Quality control.

25 THE COURT: I'm sorry. Industrial?

1 A JUROR: Industrial metrology.

2 THE COURT: What is that?

3 A JUROR: Metrology is the science of precision
4 in measurement and the industrial application is quality
5 control.

6 THE COURT: And you own the company?

7 A JUROR: I'm a co-owner.

8 THE COURT: Okay.

9 A JUROR: And part of the problem was I was able
10 to schedule my schedule around everything but this week. I
11 have a trade show in Secaucus Tuesday and Wednesday and a
12 seminar in St. Mary's on Thursday.

13 THE COURT: And if you weren't able to make it
14 to those, what would be the impact on the business?

15 A JUROR: Not good. I'm one of the presenters
16 for the seminar and the trade show. I have to keep -- I'm a
17 small company. I've got to keep everything I can get out
18 there.

19 THE COURT: That is partly how you get business?

20 A JUROR: Correct.

21 THE COURT: Okay.

22 A JUROR: And we do do work with places like
23 Boeing and some of their subcontractors.

24 THE COURT: Do you actually have a contract with
25 Boeing?

1 A JUROR: No, not at this time.

2 THE COURT: Were there other issues?

3 A JUROR: Well, the patent infringement. I'm
4 kind of sensitive to that.

5 THE COURT: Tell us about that.

6 A JUROR: Well, I think if you took the time and
7 effort to create something and you went through the process
8 and you had it patented, I don't think it's fair somebody
9 comes in and just kind of pinches your work.

10 THE COURT: So if you heard that in this case
11 one side had a patent and the other one is accused of
12 infringement, do you think one side might start out a little
13 bit ahead?

14 A JUROR: In my eyes, yes.

15 THE COURT: Now, do you think you would be able
16 to put that aside and be fair and impartial to both sides?

17 A JUROR: I probably could.

18 THE COURT: Okay. Other issues?

19 A JUROR: That's it.

20 THE COURT: Basically, this is bad timing for
21 you?

22 A JUROR: Yes. If it was last week or next
23 week, but this week it's just too many fixed things.

24 THE COURT: Let me see if the lawyers have any
25 questions for you. From the plaintiffs?

1 MS. SHARP: No questions.

2 MR. SCHOELL: No questions.

3 THE COURT: All right. You can step out. Thank
4 you very much.

5 (Juror left juryroom.)

6 THE COURT: Your thoughts?

7 MS. SHARP: We have no application.

8 MR. KELLEHER: We would move to strike for
9 cause, Your Honor, just based on hardship and his indication
10 that one side would start out ahead.

11 THE COURT: All right. I'm more concerned about
12 the schedule. He seems pretty clearly not to want to be
13 here and not afraid to voice it. I'm concerned about the
14 impact on his business, and I will go ahead and strike No.
15 16.

16 THE DEPUTY CLERK: Okay.

17 (Juror entered juryroom.)

18 THE COURT: Good morning. Have a seat, please.

19 A JUROR: How are you?

20 THE COURT: Good. Thank you. And you?

21 A JUROR: Good.

22 THE COURT: What is your juror number?

23 A JUROR: 52.

24 A COURT: Linda Vintigni?

25 A JUROR: Vintigni.

1 THE COURT: Vintigni. Sorry about that.

2 What did you answer yes to, please?

3 A JUROR: Well, what I was concerned about, I
4 work for DuPont, and so I work in a sales and marketing
5 organization and so we deal often with the trademarks and
6 like some of the patent stuff, you know, and some of the
7 stuff I deal with.

8 THE COURT: All right. And what do you do at
9 DuPont? What's your role?

10 A JUROR: I'm a sales assistant, so I work with
11 what would probably be the most well-known, it's the four
12 products group. So it's like the Teflon trademark.

13 THE COURT: Okay. And have you had any role in
14 any disputes there may have been about the trademarks?

15 A JUROR: No.

16 THE COURT: Any role in disputes about patents?

17 A JUROR: No.

18 THE COURT: Are you aware of DuPont having such
19 issues?

20 A JUROR: Yes. Yes.

21 THE COURT: And so if you heard that this trial
22 partly involves disputes over trademarks and patents, do you
23 think you would be able to fairly evaluate that for both
24 sides?

25 A JUROR: Well, I mean, I guess I would feel

1 only after having all of this, you know, time and service
2 with the company, I guess I would feel like a little bit
3 committed to, like, the integrity of the trademarks and
4 stuff like that. But I have never been involved in any kind
5 of disputes.

6 THE COURT: All right. So because DuPont has
7 trademarks, for example --

8 A JUROR: Yes.

9 THE COURT: -- you think you might start out a
10 little sympathetic here to the side that has trademarks?

11 A JUROR: Well, I mean, maybe, yes.

12 THE COURT: All right. Now, even if you started
13 out that way, do you think, you know, as I instruct you, you
14 know, you have an obligation to be fair and impartial?

15 A JUROR: Okay.

16 THE COURT: To both sides and to listen to the
17 evidence and follow the law I give you, do you think you
18 would be able to do that?

19 A JUROR: Yes. Mm-hmm.

20 THE COURT: All right. Were there other issues
21 you wanted to talk about?

22 A JUROR: Well, the only other issue is that I
23 have a medical doctor's appointment later on this week. I
24 was experiencing some, you know --

25 THE COURT: You don't have to give us details.

1 A JUROR: Yes.

2 THE COURT: That's fine. But is it an
3 appointment on like Thursday or Friday?

4 A JUROR: Wednesday or Thursday. I'm waiting
5 for a call back.

6 THE COURT: Okay. And is it -- you don't know
7 what time that appointment would be at this point?

8 A JUROR: I don't. But I mean, well, I didn't
9 even know we could have a cellphone here, so it's not like I
10 can get the call because I thought I had to leave my
11 cellphone in the car.

12 THE COURT: All right.

13 A JUROR: So I won't be able to know that until
14 the end of the day.

15 THE COURT: And without getting into any
16 details, is it an appointment you want to see the doctor
17 this week? Is it a hardship to put you off until next
18 week?

19 A JUROR: I do, only because I'm going out of
20 town next Thursday in the evening and so I kind of wanted to
21 start dealing with it this week.

22 THE COURT: Okay. All right. Other issues?

23 A JUROR: No. There's no other issues.

24 THE COURT: Let me see if anyone else has
25 questions for you.

1 MS. SHARP: No, Your Honor.

2 THE COURT: No. Any questions?

3 MR. KELLEHER: No, Your Honor.

4 THE COURT: Okay. You can step back out. Thank
5 you.

6 A JUROR: Okay. Thank you.

7 (The juror left the jury room.)

8 THE COURT: Any motion from plaintiff?

9 MS. SHARP: No motion, your Honor.

10 MR. SCHOELL: No, Your Honor.

11 THE COURT: No? All right.

12 (Pause.)

13 DEPUTY CLERK: I have to go in there and get
14 them.

15 THE COURT: Is everything okay?

16 DEPUTY CLERK: Yes.

17 THE COURT: There's no motion on 52. You can
18 bring in the next person.

19 (The juror entered the jury room.)

20 DEPUTY CLERK: Ma'am?

21 THE COURT: Have a seat right here, please.
22 Tell us what your juror number is.

23 A JUROR: 22.

24 THE COURT: 22. Jacqueline Hill?

25 A JUROR: Mm-hmm.

1 THE COURT: Yes? I'm sorry. For the court
2 reporter's benefit, yes or no will help. Is it yes?

3 A JUROR: Yes.

4 THE COURT: Okay. Thank you.

5 And tell us, if you recall, what you answered
6 yes to, please.

7 A JUROR: Would I be able to sit, like, from
8 9:00 to 3:00.

9 THE COURT: Okay.

10 A JUROR: Or --

11 THE COURT: You have a concern about the
12 schedule?

13 A JUROR: Yes. I have problems sitting. I
14 work, but it's standing all day. I have arthritis in my
15 knees, and my left knee in particular.

16 THE COURT: Okay.

17 A JUROR: And I have to drive -- it took me like
18 two hours today.

19 THE COURT: All right. All right. Well,
20 obviously, I'm very sorry to hear about the arthritis. I
21 don't know if you saw where the jury box is. It would have
22 been to my right.

23 A JUROR: Mm-hmm.

24 THE COURT: There's a little bit of space there.
25 If I told you it was okay to move around as need be, you can

1 stand up at times, would that help at all?

2 A JUROR: Yes, that helps.

3 THE COURT: I told you so it's roughly 9:00 to
4 4:30. We usually take about a half-hour of breaks plus a
5 half-hour for lunch. We can take additional breaks. Is
6 that something you think you could do or would that be too
7 much?

8 A JUROR: I didn't know if I could stand.

9 THE COURT: Right. You could if need be.

10 All right. And then the driving. So you live
11 far away?

12 A JUROR: In Dover.

13 THE COURT: Right. If we could put you up at a
14 hotel up here, would that be helpful at all?

15 A JUROR: Yeah.

16 THE COURT: That could help?

17 A JUROR: Yeah.

18 THE COURT: Okay.

19 A JUROR: Yes.

20 THE COURT: All right. What other issues? Do
21 you have some other issues?

22 A JUROR: No.

23 THE COURT: No? That's it.

24 A JUROR: Just loss of pay.

25 THE COURT: All right. Sorry about that.

1 All right. Let me see if there are other
2 questions for you.

3 A JUROR: Okay.

4 MS. SHARP: No additional questions, Your Honor.

5 THE COURT: No? Defendant?

6 MR. SCHOELL: No questions.

7 THE COURT: All right. Step back out. Thank
8 you.

9 A JUROR: Thank you.

10 (The juror left the jury room.)

11 THE COURT: Any motion from plaintiff?

12 MS. SHARP: No, Your Honor.

13 THE COURT: From defendant?

14 MR. KELLEHER: We would move for cause, Your
15 Honor, just because of hardship with her having to travel so
16 much and her medical issues.

17 THE COURT: Okay. Plaintiff?

18 MR. LINDVALL: Your Honor, she said she, as long
19 as she could stand periodically once a juror, that would be
20 overcome, and your Honor offered her residence at a hotel
21 close to here, so we think that would eliminate any of those
22 hardships.

23 THE COURT: Yes. My impression was, while there
24 would still be some hardship, it was adequately remedial, I
25 suppose, from her perspective, both standing, the breaks and

1 the hotel, so I'm going to deny the motion.

2 DEPUTY CLERK: Next?

3 (The juror entered the jury room.)

4 THE COURT: Hi. Have a seat.

5 A JUROR: Hello.

6 THE COURT: Tell us your juror number.

7 A JUROR: 47.

8 THE COURT: Brandon Thompson?

9 A JUROR: Yes.

10 THE COURT: Okay. And what did you answer yes
11 to, please, if you recall?

12 A JUROR: I don't. I have no idea.

13 THE COURT: Okay.

14 A JUROR: There were two or three of them.

15 THE COURT: Do you remember generally? Any
16 idea?

17 A JUROR: One of them was a relative that was a
18 juror.

19 THE COURT: Okay.

20 A JUROR: I don't know if he was a juror. He
21 got called for jury duty. I don't know what he actually
22 did. It was one of the State courts.

23 THE COURT: Here in Delaware?

24 A JUROR: Yes. In Kent County.

25 THE COURT: Okay. And did that relative share

1 any impressions with you?

2 A JUROR: I have no idea what he did.

3 THE COURT: Okay. All right. Do you remember
4 any other general issues?

5 A JUROR: Legal education.

6 THE COURT: You have some legal education?

7 A JUROR: Very, very little.

8 THE COURT: Tell us about it.

9 A JUROR: Basic constitutional law, OSHA
10 regulations, safety.

11 THE COURT: And you've taken some formal classes
12 on is that?

13 A JUROR: Yes.

14 THE COURT: At a university?

15 A JUROR: Yes. College, university.

16 THE COURT: Okay. Both on constitutional law
17 and on some sort of regulations as well?

18 A JUROR: Yes.

19 THE COURT: Okay. You're not in law school?

20 A JUROR: No.

21 THE COURT: All right. So if you are on this
22 jury, I will instructing you on the law to apply here. If I
23 were to tell you something different than what you may have
24 learned in your classes, would you be able to follow what I
25 tell you?

1 A JUROR: Yes.

2 THE COURT: All right. Even if you think it's
3 wrong?

4 A JUROR: Yes. I mean, you've been doing this a
5 lot longer.

6 THE COURT: All right. Do you remember any
7 other issues?

8 A JUROR: I think that was it.

9 THE COURT: You hadn't heard of any of these
10 witnesses?

11 A JUROR: I've never heard of the companies,
12 never heard of any of the people.

13 THE COURT: All right. And no training in
14 riveting?

15 A JUROR: No.

16 THE COURT: Or airplane manufacturing?

17 A JUROR: No.

18 THE COURT: Okay. All right. Nothing else that
19 you recall?

20 A JUROR: No.

21 THE COURT: All right. Let me see if there are
22 other questions for you.

23 MS. SHARP: No other questions.

24 MR. KELLEHER: No, Your Honor.

25 MR. SCHOELL: No questions.

1 THE COURT: Thank you. Step out, then.

2 A JUROR: Thank you.

3 (The juror left the jury room.)

4 THE COURT: Any motion?

5 MS. SHARP: No motion.

6 MR. KELLEHER: No, Your Honor.

7 THE COURT: All right.

8 DEPUTY CLERK: Next?

9 (The juror entered the jury room.)

10 THE COURT: Good morning. Have a seat, please.

11 Tell us your juror number.

12 A JUROR: 41.

13 THE COURT: Robert Rifenburg?

14 A JUROR: Right.

15 THE COURT: Okay. So if you recall, what did
16 you answer yes to?

17 A JUROR: Being on a jury before.

18 THE COURT: Okay. Was that here in Delaware?

19 A JUROR: Yes.

20 THE COURT: In this building, Federal Court?

21 A JUROR: No. Kent County Supreme Court.

22 THE COURT: Okay. And do you recall about how
23 long ago was that?

24 A JUROR: Two years.

25 THE COURT: Two years ago, approximately?

1 A JUROR: Yes.

2 THE COURT: And what kind of case, if you
3 remember?

4 A JUROR: It was against the Kent General
5 Hospital.

6 THE COURT: Okay. Was it --

7 A JUROR: And some doctors.

8 THE COURT: Medical malpractice? Something had
9 gone wrong?

10 A JUROR: Yes.

11 THE COURT: And did the jury reach a verdict?

12 A JUROR: Yes.

13 THE COURT: And do you remember which side one
14 the trial?

15 A JUROR: The hospital.

16 THE COURT: The hospital?

17 A JUROR: Mm-hmm.

18 THE COURT: They were probably the defendant?

19 A JUROR: Mm-hmm.

20 THE COURT: All right. What was your general
21 feeling about that whole process?

22 A JUROR: It's kind of hard to say.

23 THE COURT: Let me ask you this: This would be
24 a very different trial. Obviously, a different court,
25 different types of issues, different parties. Is there

1 anything about that experience that you think might affect
2 how you see this very different case here?

3 A JUROR: No. This sounds more like a patent
4 infringement of some sort.

5 THE COURT: Right. Okay. Were there other
6 issues you wanted to raise with us?

7 A JUROR: The -- I've done some work at an
8 aircraft assembly plant as a maintenance contractor,
9 basically.

10 THE COURT: Okay. Were you involved in the
11 manufacturing of the aircraft?

12 A JUROR: No.

13 THE COURT: Okay.

14 A JUROR: Just heating of the hangars.

15 THE COURT: Of the a facility itself?

16 A JUROR: Yes, the facility.

17 THE COURT: Do you know in those facilities
18 where you've worked what types of equipment they were using
19 in connection with the manufacturing of the airplanes?

20 A JUROR: No, basically not.

21 THE COURT: Had you heard of any of the
22 companies I mentioned before today?

23 A JUROR: No.

24 THE COURT: No. Any other issues you wanted to
25 raise?

1 A JUROR: The -- it's going to cause a financial
2 hardship for the travel and the days off for my company and
3 myself.

4 THE COURT: Okay. Let's talk about the
5 financial hardship to you. Will you not be getting paid if
6 you are here?

7 A JUROR: Right.

8 THE COURT: And for the company, what would be
9 the impact to them if you are not at work this week?

10 A JUROR: They usually charge the customers and
11 that would be the income that they won't be getting and the
12 work being done.

13 THE COURT: Right. All right. And then in
14 terms of the travel, about how far away are you?

15 A JUROR: 75 miles.

16 THE COURT: And if we were able to put you up at
17 a hotel here in Wilmington, would that help?

18 A JUROR: No. That would make it worse.

19 THE COURT: It would make it worse?

20 A JUROR: Yes.

21 THE COURT: Okay. All right. Were there other
22 issues?

23 A JUROR: No. That about covers it.

24 THE COURT: Okay. Let me see if there are
25 questions from anyone else for you. From plaintiff?

1 MS. SHARP: Just a follow-up question on your
2 experience as a juror. Was that experience good, bad, or
3 are you just neutral about it?

4 A JUROR: It was bad for me because of the
5 financial distress it caused and it took a week-and-a-half.

6 MS. SHARP: Okay. I see. Thank you.

7 A JUROR: Mm-hmm.

8 THE COURT: Any questions from defendant?

9 MR. KELLEHER: No, Your Honor.

10 THE COURT: No? Okay. All right. You can step
11 back out. Thank you very much.

12 A JUROR: All right.

13 (The juror left the jury room.)

14 THE COURT: Motion from plaintiff?

15 MS. SHARP: I think that he has articulated real
16 concerns about having to sit here for the duration of the
17 trial. I leave to your Honor's discretion whether that
18 rises to the level of hardship, but I'm concerned
19 particularly since he has been through the experience
20 before, that he's simply not going to be happy or attentive
21 as he sits here.

22 THE COURT: All right. What's the defendants'
23 view?

24 MR. KELLEHER: Nothing from us, Your Honor.

25 THE COURT: Okay. I'm going to go ahead and

1 strike him. I'm concerned. I think he is trying to be
2 helpful, but he clearly seems concerned, and the hardship
3 from last time around I think is still impacting him and I
4 don't want to do that to him again, so we'll strike 41.

5 (The juror entered the jury room.)

6 THE COURT: Good morning.

7 A JUROR: Good morning.

8 THE COURT: Have a seat, please. Tell us your
9 juror number.

10 A JUROR: 45.

11 THE COURT: William Starcher?

12 A JUROR: That's it.

13 THE COURT: Okay. And what did you answer yes
14 to, if you remember?

15 A JUROR: Yes.

16 THE COURT: Even a general idea.

17 A JUROR: I did take some legal courses in
18 school, but I swear I've forgotten everything. I'm in
19 accounting, so we had business law and some other one, which
20 I can't even remember the name of it.

21 THE COURT: Okay.

22 A JUROR: The only definitely "yes" was I served
23 on a jury before.

24 THE COURT: About how long ago did you serve on
25 a jury?

1 A JUROR: At least ten years, ten years ago.

2 THE COURT: Here in Delaware?

3 A JUROR: Yes.

4 THE COURT: Was it Federal or State Court?

5 A JUROR: State.

6 THE COURT: All right. What do you remember
7 about what kind of case it was?

8 A JUROR: It was someone who -- armed robbery
9 for a convenience store.

10 THE COURT: A criminal case?

11 A JUROR: Yes.

12 THE COURT: And was there a verdict?

13 A JUROR: Yes.

14 THE COURT: Conviction or acquittal?

15 A JUROR: Guilty.

16 THE COURT: Guilty. Okay. And what was your
17 impression of that whole experience?

18 A JUROR: Interesting. It wasn't a long -- just
19 a couple days. I think it was only brought to court because
20 it was a third strike situation. It was kind of a cut and
21 dry, it seemed any way, video of a person doing it.

22 THE COURT: Okay. All right. So this is a very
23 different case, as you probably gather, civil case,
24 different burden of proof and different law.

25 Would you be able to put aside that past

1 experience and follow the law I would give you about the
2 issues in this case?

3 A JUROR: Oh, yes.

4 THE COURT: Okay. Other issues you wanted to
5 raise with us?

6 A JUROR: Just hardship with being my boss, have
7 to present the budget and audit to the finance committee
8 this Friday. Then I have several other applications due,
9 which I'm sure I can try to do during the evening one night
10 this week.

11 THE COURT: But there's a particular meeting on
12 Friday?

13 A JUROR: Yes. Finance committee meeting.

14 THE COURT: And what time of day is that?

15 A JUROR: 10:00 o'clock.

16 THE COURT: In the morning?

17 A JUROR: Yeah.

18 THE COURT: Okay. All right. So we're
19 typically done here at 4:30. I don't know if that leaves
20 you time and energy later in the day to keep things moving
21 along at your job, but if you were here Friday at 10:00, is
22 there someone else who can make that report for you?

23 A JUROR: My boss.

24 THE COURT: Your boss?

25 A JUROR: Like I said, he won't like it, but --

1 THE COURT: It can be done. Okay.

2 A JUROR: Yeah.

3 THE COURT: All right. Are there other issues?

4 A JUROR: No, that's it.

5 THE COURT: Okay. Let me see if there are more
6 questions for you.

7 First, from plaintiff?

8 MR. LINDVALL: No.

9 MS. SHARP: No.

10 THE COURT: Defendant?

11 MR. KELLEHER: No, Your Honor.

12 THE COURT: All right. Thank you.

13 A JUROR: Thank you.

14 THE COURT: Head back out. Thank you.

15 (The juror left the jury room.)

16 THE COURT: Any motion from plaintiff?

17 MS. SHARP: No.

18 THE COURT: Defendant?

19 MR. KELLEHER: No.

20 (Juror entered juryroom.)

21 THE COURT: Good morning.

22 A JUROR: Good morning.

23 THE COURT: Have a seat, please. Tell us your
24 juror number.

25 A JUROR: 9.

1 THE COURT: Reginald Brown.

2 A JUROR: Yes.

3 THE COURT: If you recall, what did you answer
4 "yes" to, please?

5 A JUROR: My medication is one thing. I carry
6 these with me all the time because I'm diabetic. I have
7 Agent Orange from Vietnam.

8 THE COURT: I'm sorry.

9 A JUROR: Thank you. And usually if I don't
10 have these -- I keep Snicker bars but my sugar drops down on
11 me and I start getting sick, and I already passed out. And
12 I have to eat normally around 12:00 o'clock or so or
13 sometimes I will start to get to shaking and stuff, and I
14 have to do it then and at dinnertime.

15 And not on this court thing, but Friday, Friday
16 we already had a commitment to go to Chesapeake, Virginia on
17 the motorcycle for a two day event down there.

18 But this is my main thing right here
19 (indicating), and then there is like my feet be burning all
20 the time. I forget what you call it. Plus I got memory
21 pills for my VA. Most of my medicine comes from the VA.
22 They got the memory for me, they got this for me
23 (indicating). I can't even remember most of it.

24 THE COURT: Well, you have given us plenty to
25 talk a little bit about. I'm sorry. I need to inquire a

1 little bit about some of the conditions you have mentioned.

2 Let's start with the memory pills. Do you have
3 problems with your memory?

4 A JUROR: Yes. I mean when you get older you
5 forget a lot, too, but I guess it's running through my
6 family and one day I was in Newport and I know I had to go
7 around that gas station and get back on 141. I went around
8 there three times. I couldn't see the road. I couldn't
9 remember where the road was at. Sometimes it affects me.
10 Sometimes I can go ride around and remember real good.

11 THE COURT: And you are taking some sort of
12 medication for that?

13 A JUROR: Yes. I can't remember the name of the
14 medicine but it has the tiny little pills I've got to take
15 at night.

16 THE COURT: And then the diabetes and the need
17 to eat and these other pills you have?

18 A JUROR: My insulin, I take that, the pen. I
19 stick myself with that pen, 75/25.

20 THE COURT: All right. And so we typically take
21 about a 15 minute break in the morning, 15 minute break in
22 the afternoon, half hour break usually around 12:30. We
23 can be somewhat flexible on that, and we can let you take
24 additional breaks any time you need it.

25 But all that said, you would be sitting in that

1 jury box for, you know, portions of six to seven hours over
2 the course of the day. Is that something you think you
3 could do?

4 A JUROR: I have to have some food with me.

5 THE COURT: Right. If we let you do that, would
6 that take care of at least some of the concerns?

7 A JUROR: Yes. I guess.

8 THE COURT: Okay.

9 A JUROR: As long as I get some food. Because
10 once I start eating -- I have to eat. If I have orange
11 juice or something like that, I have to drink that orange
12 juice to bring me back.

13 THE COURT: Right. All right. And then this
14 event you have on Friday, that is some sort of vacation or
15 something?

16 A JUROR: Yes. It's about 90 of us riding
17 motorcycles. Not all of us riding motorcycles. Some of us
18 riding vehicles. Some of them are not hardcore riders like
19 us, some of them ride in vehicles.

20 THE COURT: And when is that scheduled to leave?

21 A JUROR: 9:00 o'clock Friday morning and to
22 come back Sunday.

23 THE COURT: All right. Thank you. Let me see
24 if there is any questions for you. Plaintiffs?

25 MS. SHARP: No questions.

1 MR. KELLEHER: No, Your Honor.

2 THE COURT: No. All right. You can step back
3 out. Thank you very much.

4 A JUROR: Okay now.

5 (Juror left juryroom.)

6 THE COURT: All right. I think you know we
7 could accommodate all that but I don't see the need to do
8 that and take any risks.

9 MS. SHARP: Agree.

10 MR. SCHOELL: Agree.

11 MR. KELLEHER: Agree.

12 THE COURT: All right. He is going to be
13 stricken or is stricken.

14 THE DEPUTY CLERK: No. 9.

15 THE COURT: No. 9.

16 (Juror entered juryroom.)

17 THE COURT: Good morning. You can have a seat,
18 please. Tell us your juror number.

19 A JUROR: 51.

20 THE COURT: 51. Charles Vineyard?

21 A JUROR: Yes.

22 THE COURT: What did you answer "yes" to, if you
23 recall.

24 A JUROR: Juror duty.

25 THE COURT: You have been a juror before?

1 A JUROR: Yes. It was civil.

2 THE COURT: Here in Delaware?

3 A JUROR: Yes.

4 THE COURT: About how long ago?

5 A JUROR: 15 years.

6 THE COURT: Okay. And do you remember anything
7 about what kind of civil case it was?

8 A JUROR: Yes. The man was suing his insurance
9 agent because of insufficient coverage. When his building
10 burned down, it wasn't covered and he was suing his agent
11 for not selling him enough insurance, more or less.

12 THE COURT: Right. And do you recall if there
13 was a verdict?

14 A JUROR: Yes, not guilty.

15 THE COURT: So you ruled for the insurance
16 company?

17 A JUROR: Yes.

18 THE COURT: All right. Okay.

19 A JUROR: Or agent.

20 THE COURT: Agent, right. Did you have any
21 general feelings about that whole process?

22 A JUROR: About what I expected.

23 THE COURT: All right. Are there any other
24 issues you wanted to let us know about?

25 A JUROR: No.

1 THE COURT: That's it.

2 A JUROR: Not that would impact this.

3 THE COURT: All right. Let me see if there are
4 other questions for you from the plaintiff.

5 MS. SHARP: Are there any general impressions
6 you had of your experience as a juror that you think might
7 have any impact on what you would do here?

8 A JUROR: Not that I'm aware of.

9 MS. SHARP: Okay. Thank you.

10 THE COURT: Defendants?

11 MR. KELLEHER: Nothing from us, Your Honor.

12 THE COURT: Okay. Thank you very much. You can
13 step out.

14 (Juror left juryroom.)

15 THE COURT: Is there any motion from plaintiffs?

16 MS. SHARP: None.

17 THE COURT: Defendant?

18 MR. KELLEHER: No, Your Honor.

19 THE COURT: Okay.

20 THE DEPUTY CLERK: Next.

21 (Juror entered juryroom.)

22 THE COURT: Good morning.

23 A JUROR: Good morning.

24 THE COURT: Tell us your juror number, please.

25 A JUROR: 10.

1 THE COURT: Anita Brown.

2 A JUROR: Yes.

3 THE COURT: Okay. If you recall, what did you
4 answer "yes" to, please?

5 A JUROR: It was the one about being a juror.

6 THE COURT: Okay.

7 A JUROR: I have.

8 THE COURT: Here in Delaware?

9 A JUROR: No, both times in Philadelphia.

10 THE COURT: So twice in Philadelphia. And about
11 how long ago were they?

12 A JUROR: Years. Many, many years.

13 THE COURT: More than five years ago?

14 A JUROR: Yes, yes. More than five.

15 THE COURT: Do you remember anything about what
16 kind of cases they were?

17 A JUROR: One had to do with drugs. I know
18 that.

19 THE COURT: Criminal case?

20 A JUROR: A criminal case.

21 And the other one had to do with, it was the
22 first one I been on, it had to do with an asbestos case.
23 Medical, I guess. Medical.

24 THE COURT: And was there a verdict in the
25 criminal case?

1 A JUROR: There was.

2 THE COURT: Do you remember what it was?

3 A JUROR: Not guilty.

4 THE COURT: Not guilty. And how about in the
5 asbestos case? Did you all reach a decision?

6 A JUROR: Not guilty.

7 THE COURT: Is there anything about those two
8 experiences that you think might impact how you experience
9 this very different case here?

10 A JUROR: No.

11 THE COURT: No?

12 A JUROR: (Shaking head no.)

13 THE COURT: All right. Were there other issues
14 you wanted to tell us about?

15 A JUROR: I think the other one had to do -- oh,
16 for that particular number?

17 THE COURT: Well, first I guess anything else
18 about your jury experience that you think we should know.

19 A JUROR: No.

20 THE COURT: All right. Other numbers? Other
21 questions?

22 A JUROR: I think there was something to do with
23 a deposition.

24 THE COURT: Have you been deposed before?

25 A JUROR: I have.

1 THE COURT: Tell us a little bit about that.

2 A JUROR: When you say deposed, I was actually
3 giving my own deposition.

4 THE COURT: Right. Someone was asking you
5 questions?

6 A JUROR: Right. Um-hmm.

7 THE COURT: What kind of case was it?

8 A JUROR: An accident.

9 THE COURT: Car accident?

10 A JUROR: Car accident.

11 THE COURT: And what was your role in that?

12 A JUROR: I was the person that was in the
13 accident.

14 THE COURT: Okay. And so you were placed under
15 oath and asked certain questions?

16 A JUROR: Yes, um-hmm.

17 THE COURT: Did that case ever go to trial?

18 A JUROR: No.

19 THE COURT: Okay. What was your feeling about
20 that whole experience?

21 A JUROR: It was interesting.

22 THE COURT: All right. Are there other issues
23 you wanted to tell us about in response to my questions?

24 A JUROR: No.

25 THE COURT: Let's see if there are any questions

1 for you, from plaintiff.

2 MS. SHARP: No questions.

3 MR. SCHOELL: Just to clarify you mentioned, you
4 testified about an accident. Were you a party to a lawsuit?

5 A JUROR: Yes, I actually did the suing.

6 MR. SCHOELL: Okay. You were suing somebody in
7 a lawsuit?

8 A JUROR: Yes.

9 MR. SCHOELL: And you had your deposition taken
10 as a result of that?

11 A JUROR: Yes.

12 MR. SCHOELL: How did things work out for your
13 lawsuit? Were you satisfied?

14 A JUROR: Yes. Yes, I was.

15 MR. SCHOELL: About how long ago was that?

16 A JUROR: Three years. Four years now.

17 THE COURT: And that was here in Delaware?

18 A JUROR: It was.

19 THE COURT: All right. Is there anything else?

20 MS. SHARP: No, Your Honor.

21 MR. KELLEHER: Ma'am, one other question.

22 A JUROR: Yes.

23 MR. KELLEHER: You work for the Internal Revenue
24 Service?

25 A JUROR: I do.

1 MR. KELLEHER: Does working for the Federal
2 Government give you any impressions about the United States
3 Patent Office?

4 A JUROR: No.

5 MR. KELLEHER: I don't have any other questions.

6 THE COURT: Thank you very much. You can step
7 out.

8 A JUROR: Thank you.

9 THE COURT: Thank you.

10 (Juror left juryroom.)

11 THE COURT: You didn't mean that as a joke.

12 (Laughter.)

13 THE COURT: Did you have any motions from the
14 plaintiffs?

15 MS. SHARP: No.

16 THE COURT: From defendants?

17 MR. KELLEHER: Nor from us.

18 (Juror entered juryroom.)

19 THE DEPUTY CLERK: Have a seat here.

20 THE COURT: Good morning.

21 A JUROR: Good morning.

22 THE COURT: Tell us please what your juror
23 number is.

24 A JUROR: 53.

25 THE COURT: 53.

1 A JUROR: Yes.

2 THE COURT: You should be Donald Williams.

3 A JUROR: Yes.

4 THE COURT: Okay. What did you answer "yes" to,
5 if you recall.

6 A JUROR: I was a juror on a case in Kent
7 County. It was a civil case.

8 THE COURT: About how long ago?

9 A JUROR: A little over a year.

10 THE COURT: Okay. And what kind of civil case
11 was it?

12 A JUROR: It was an injury related. The
13 dependent was hurt in an accident and she was trying to
14 recoup some medical assistance in that respect. And the
15 defendant had or the, yes, the defendant. Yeah. The
16 defendant was, had already did the right things as far as
17 she had insurance, did that. The plaintiff, she had signed
18 off on her medical, after two years, that the insurance
19 company was covering. And then she was just trying to get
20 more money in regard to medical.

21 THE COURT: And --

22 A JUROR: Injury.

23 THE COURT: -- did you reach a verdict?

24 A JUROR: Yes, we did.

25 THE COURT: And which side?

1 A JUROR: It was for the plaintiff, but it was a
2 minimum amount. She was covered to see a physician over a
3 period of time. I think it was like ten years. So she was
4 given that to see him in regard to the injury.

5 THE COURT: All right. So how did you feel
6 about that whole experience?

7 A JUROR: Well, I was the head juror.

8 THE COURT: Okay.

9 A JUROR: So I listened to all the folks in
10 there on their opinions for the facts that were given. We
11 thought we came up with a positive result that helped both
12 sides. You know, we didn't -- there was no one-sided thing,
13 I felt. I thought we were fair, and I thought the people on
14 the jury did a good job.

15 THE COURT: Okay. Are there other things you
16 wanted to tell us about?

17 A JUROR: No. It was a pleasure doing it at the
18 time. I've been a resident of Delaware for about 20-some
19 years, and I'm a retired Air Force Master Sergeant. And
20 right now, I work as an educator with the Caesar Rodney
21 School District, the special needs kids.

22 THE COURT: Okay. Did you have a "yes" to any
23 of the other long questions I asked?

24 A JUROR: No, I had no idea where it was going.
25 In the Air Force, I worked as an inspector for fuels, but

1 it wasn't on aircraft. It was fuels like systems that
2 refuelled aircraft. And then I was also a lab tech or in
3 charge of fuel-related sampling of presidential aircraft and
4 things like that.

5 THE COURT: That sounds interesting.

6 A JUROR: Yes, it was, pretty much.

7 THE COURT: But you had not heard of the
8 companies that I mentioned?

9 A JUROR: No, I couldn't even pronounce some of
10 them.

11 THE COURT: Neither could I. And you never
12 worked in manufacturing of an aircraft?

13 A JUROR: No, sir.

14 THE COURT: Okay.

15 A JUROR: No, Your Honor.

16 THE COURT: Is there anything else you wanted to
17 tell us?

18 A JUROR: No.

19 THE COURT: Let's see if the plaintiffs have any
20 questions for you.

21 MS. SHARP: No.

22 THE COURT: Defendants?

23 MR. KELLEHER: No, Your Honor.

24 THE COURT: Okay. Thank you very much.

25 (Juror left juryroom.)

1 THE COURT: Is there any motion from plaintiffs?

2 MS. SHARP: No.

3 THE COURT: Defendants?

4 MR. KELLEHER: No, Your Honor.

5 THE COURT: Okay.

6 THE DEPUTY CLERK: Next.

7 (Juror entered juryroom.)

8 THE COURT: Good morning.

9 A JUROR: Thank you.

10 THE COURT: Have a seat, please; and tell us
11 your juror number.

12 A JUROR: Sure. 38.

13 THE COURT: David Pickrell.

14 A JUROR: That's me.

15 THE COURT: And what did you answer "yes" to, if
16 you recall?

17 A JUROR: Well, it was primarily the last one.
18 But as far as the length of time, I look forward to
19 dedicating time for at least two days, but I run a business
20 here in Newark. It's a European company. I have to collect
21 reports at the end of each month, and these have to be over
22 there by the 10th, so ...

23 And as far as I'm familiar with manufacturing.
24 That is what we do. I don't see any other issues. I'm
25 familiar with aircraft manufacturing.

1 THE COURT: You are or are not?

2 A JUROR: I am. I don't do business with it.

3 I'm familiar with aviation and working on aircraft.

4 THE COURT: All right. Let's talk a little bit
5 more about the business. So the information we have says
6 the company is Chiorino.

7 A JUROR: Chiorino. It's an Italian company. I
8 run the U.S. subsidiary. We've got 15 other subsidiaries in
9 other countries in Europe.

10 THE COURT: And what type of report is it that
11 you are in the midst of preparing for them?

12 A JUROR: It's the monthly managing directors
13 report of the sales. We have 27 employees here, 10 outside
14 people. We're a conveyor belt manufacturer.

15 THE COURT: Okay.

16 A JUROR: And we do food processing, paper
17 converting, airport baggage manufacturing. Everything that
18 touches a belt one way or another.

19 THE COURT: So some number of the 27 employees
20 provide information to you last week, that is, at the end of
21 the month?

22 A JUROR: Yes, it comes through our computing
23 system or accounting system. That is gathered and put
24 together in the first ten days or seven or eight days of
25 each month.

1 THE COURT: And, right now, the information is
2 due in Italy a couple days from now?

3 A JUROR: Correct.

4 THE COURT: And if you were unable to get that
5 information to them on I think it's Wednesday, what would
6 happen?

7 A JUROR: Well, I probably wouldn't lose my job,
8 but it's all the subsidiaries must have their information at
9 the headquarters at the beginning of the month, by the 10th
10 of the month.

11 THE COURT: And it's part of your responsibility
12 to get that done?

13 A JUROR: Yes.

14 THE COURT: Okay. And you say they manufacture
15 conveyor belts. Is that how you have some familiarity with
16 aviation or is it from something else?

17 A JUROR: We've supplied belts either through
18 airport baggage handling. We've done some work, I'm going
19 back many years, with Boeing for food processing. There are
20 some belt designs that run through the hull of the aircraft,
21 ramp snakes for loading the aircraft and the like.

22 THE COURT: Had you heard of any of the
23 companies I mentioned today?

24 A JUROR: No.

25 THE COURT: Other than Boeing?

1 A JUROR: Not the ...

2 THE COURT: Not the plaintiffs or the
3 defendants?

4 A JUROR: Yeah, but all the other companies.

5 THE COURT: All right. Are there any other
6 issues you wanted to tell us about?

7 A JUROR: No. I mean I'm familiar a little bit
8 with trademarks. We have some. That's important to me.

9 THE COURT: Okay. Is there anything else?

10 A JUROR: No.

11 THE COURT: No. Okay. Let me see if the
12 lawyers have any questions for you. Plaintiffs?

13 MS. SHARP: No questions.

14 THE COURT: Defendants?

15 MR. KELLEHER: No, Your Honor.

16 THE COURT: Okay. You can step out. Thank you
17 very much.

18 (Juror left juryroom.)

19 THE COURT: Is there any motion from plaintiffs?

20 MS. SHARP: No motion.

21 THE COURT: Any motion?

22 MR. KELLEHER: No, Your Honor.

23 THE COURT: Okay.

24 (Juror entered juryroom.)

25 THE COURT: Good morning. Have a seat, please.

1 And tell us your juror number.

2 A JUROR: Three.

3 THE COURT: Kathleen Allen.

4 A JUROR: Yes.

5 THE COURT: If you recall, what did you answer
6 "yes" to?

7 A JUROR: My husband was a juror.

8 He also is on a number of patents. He is listed
9 as a patent -- or he works, he is a computational biologist
10 with DuPont, and then plant patents.

11 And my father worked for Boeing.

12 THE COURT: Okay.

13 A JUROR: For years.

14 THE COURT: All right. We'll come back and talk
15 about those. Were there any other issues?

16 THE JURORS: Those are the ones I remember.

17 THE COURT: It's hard to remember. I threw a
18 lot out there.

19 So your husband, first he was a juror. Was that
20 here in Delaware?

21 A JUROR: Yes.

22 THE COURT: Do you know if it was in this
23 federal court or in state court?

24 A JUROR: I don't know.

25 THE COURT: Okay. Do you know anything about

1 what kind of case it was?

2 A JUROR: It was a medical malpractice case.

3 THE COURT: Okay. And about how long ago?

4 A JUROR: 15 years.

5 THE COURT: Okay.

6 A JUROR: It has been a while.

7 THE COURT: All right. Is there anything about
8 his experience that might affect how you would perceive
9 being on a jury here?

10 A JUROR: I don't think so.

11 THE COURT: All right. And he is listed on some
12 patents. As an inventor?

13 A JUROR: Yes. It's -- they are group
14 inventors.

15 THE COURT: Okay. About how many patents do you
16 think?

17 A JUROR: Probably -- I'm guessing -- over 20, I
18 would think.

19 THE COURT: All right. And has he ever
20 expressed to you any feelings about the patent application
21 process?

22 A JUROR: He doesn't do the -- it's patented by
23 DuPont.

24 THE COURT: All right.

25 A JUROR: But --

1 THE COURT: Has he -- well, let me ask you
2 first: Do you have any strong views about the patent
3 system?

4 A JUROR: He's patenting, they are patenting
5 genetic material and we have a lot of discussions about
6 whether that's something you can do or not.

7 THE COURT: All right. And do you know if any
8 of the patents he has been part of have ended up in any
9 lawsuit?

10 A JUROR: I don't know. It's a possibility.

11 THE COURT: Okay.

12 A JUROR: I don't know.

13 THE COURT: Do you have any feelings about
14 patent lawsuits?

15 A JUROR: We have a lot of philosophical
16 discussions about whether you can patent a gene.

17 THE COURT: Right.

18 A JUROR: Whether a plant gene or it's something
19 that you've genetically modified.

20 THE COURT: All right. And your father worked
21 for Boeing?

22 A JUROR: Yes.

23 THE COURT: Do you know what kind of work he did
24 for them?

25 A JUROR: He was an engineer with Boeing VTOL

1 Helicopters.

2 THE COURT: Okay. And about how long ago was
3 that employment?

4 A JUROR: A long time ago. He passed away in
5 1980, and at that time he was working for Hughes
6 Helicopters, so he had left Boeing and was with Hughes.

7 THE COURT: All right.

8 A JUROR: In California.

9 THE COURT: All right. Do you have any strong
10 feelings about Boeing as a result of his experience?

11 A JUROR: No.

12 THE COURT: No.

13 A JUROR: You know, part of my childhood,
14 really.

15 THE COURT: Right. Okay. Is there anything
16 else that you remember that you thought you should mention
17 to us?

18 A JUROR: No.

19 THE COURT: Let me see if there are other
20 questions for you.

21 Plaintiff?

22 MS. SHARP: No.

23 MR. KELLEHER: No, Your Honor.

24 THE COURT: Thank you very much.

25 A JUROR: Thank you.

1 (The juror left the jury room.)

2 THE COURT: Any motions?

3 MS. SHARP: No.

4 THE COURT: Any motion?

5 MR. KELLEHER: No, Your Honor.

6 THE COURT: All right.

7 (The juror entered the jury room.)

8 THE COURT: Good morning.

9 A JUROR: How are you doing?

10 THE COURT: Your juror number, please?

11 A JUROR: 46.

12 THE COURT: John Thomas?

13 A JUROR: That's correct.

14 THE COURT: Okay. And if you recall, what did
15 you answer yes to, please?

16 A JUROR: Being here financially is going to
17 crush me. I'm a self-employed contractor and I have no
18 employees, so if I'm not at work, nothing is getting
19 done.

20 And I also have a bad kidney that's only
21 18 percent of what the full size should be. So if it starts
22 to act up, and it's going to, I'm going to have to cause a
23 disturbance every 15 minutes to go to the bathroom.

24 THE COURT: Okay. All right. Well, I'm sorry
25 to hear that.

1 Let's talk just first for a moment briefly about
2 your employment. You're employed. What did you do?

3 A JUROR: Contractor, carpenter.

4 THE COURT: Okay. And if you weren't spending
5 the week with us, what would you be doing?

6 A JUROR: Tiling and painting.

7 THE COURT: Okay. And you have some jobs lined
8 up for this week? Yes? Just for the record, yes?

9 A JUROR: Mm-hmm. Yes. I'm sorry.

10 THE COURT: All right. And nobody is going to
11 be paying you this week if you are not there doing that?

12 A JUROR: Right. And I will lose the work.

13 THE COURT: It will go to somebody else?

14 A JUROR: It needs to be done, yes.

15 THE COURT: All right. Okay. Well, I'm going
16 to be excusing you for cause, but I'm going to need to have
17 you stay for the remainder of the process. Of course, you
18 can feel free to come and go from the jury room.

19 A JUROR: Okay.

20 THE COURT: From the jury room, use the restroom
21 and all of that.

22 A JUROR: Just ask the guy if I have to go, or
23 tell him?

24 THE COURT: Yes. Listen to whatever they are
25 telling you, but there are bathrooms out there.

1 A JUROR: Right.

2 THE COURT: And use them, of course, as you
3 need, but I do need you to stick around for the rest of the
4 process, but I'm not going to make you sit on the jury in
5 light of your situation.

6 A JUROR: Thank you. Appreciate it.

7 THE COURT: Okay.

8 (The juror left the jury room.)

9 THE COURT: 46 is stricken for cause.

10 (The juror entered the jury room.)

11 THE COURT: Good morning.

12 A JUROR: Good morning.

13 THE COURT: Tell us what your juror number is,
14 please.

15 A JUROR: 11.

16 THE COURT: Judith Bungori?

17 A JUROR: Bungori.

18 THE COURT: Bungori. Do you remember anything
19 you answered yes to?

20 A JUROR: On a jury.

21 THE COURT: You've served on a jury.

22 A JUROR: And I've been deposed.

23 THE COURT: Okay. Did you serve on a jury here
24 in Delaware?

25 A JUROR: No. In Baltimore.

1 THE COURT: Baltimore?

2 A JUROR: Yes.

3 THE COURT: About how long ago?

4 A JUROR: Oh, about 15 years ago or so.

5 THE COURT: And do you remember anything about
6 the case?

7 A JUROR: It was a kidnap and rape case.

8 THE COURT: Criminal charges?

9 A JUROR: Yeah. Yeah.

10 THE COURT: All right. Did the jury reach a
11 verdict?

12 A JUROR: Yes.

13 THE COURT: Do you remember what it was?

14 A JUROR: Not guilty.

15 THE COURT: Okay. How did you feel about that
16 experience?

17 A JUROR: It was a great experience, but there
18 was no proof and that was the sad part. We had to follow
19 the guidelines and --

20 THE COURT: So --

21 A JUROR: I'm pretty sure he was guilty. That's
22 how I felt, but I voted not guilty because of the steps we
23 had to take.

24 THE COURT: And the Judge instructed you on the
25 law?

1 A JUROR: Absolutely.

2 THE COURT: And you did your best to follow the
3 law?

4 A JUROR: Yes.

5 THE COURT: Okay. Do you think that experience
6 would have any impact on how you might see this very
7 different civil trial 15 years later?

8 A JUROR: I don't know about an impact, but I
9 know that I have to follow the law, whatever it may be, so
10 whatever is put out to me.

11 THE COURT: Okay. That was the only time you
12 served on a jury; is that correct?

13 A JUROR: Yes.

14 THE COURT: All right. And you say you've been
15 deposed. When was that?

16 A JUROR: Oh, gosh, maybe that was about
17 15 years or more.

18 THE COURT: All right. What kind of case was
19 it?

20 A JUROR: I worked for Jiffy Lube International,
21 and there was some kind of litigation going on, partnership
22 versus Jiffy Lube and something, and I don't remember too
23 much of it. I was asked questions.

24 THE COURT: And was it related to your work?

25 A JUROR: Not to my work, no.

1 THE COURT: All right. But you were placed
2 under oath and asked questions?

3 A JUROR: Yes.

4 THE COURT: Okay. Were you a party in the
5 lawsuit?

6 A JUROR: No.

7 THE COURT: No. And did you have to do anything
8 else other than appear for this deposition?

9 A JUROR: No.

10 THE COURT: Do you know how the case ended up?

11 A JUROR: I think in favor of the corporate
12 office, Jiffy Lube.

13 THE COURT: Okay.

14 A JUROR: In their favor.

15 THE COURT: And do you have any feelings about
16 that process and your involvement in it?

17 A JUROR: No, because I really didn't understand
18 the whole thing except they were questioning me as it
19 relates to what my part was or working there or so on and so
20 forth. But, no. I was just questioned, yes/no-type
21 answers.

22 THE COURT: All right. Any other things I asked
23 this morning that you want to tell us about?

24 A JUROR: No.

25 THE COURT: No? Okay. Let's see if the lawyers

1 have questions for you.

2 MS. SHARP: No questions.

3 MR. KELLEHER: No, ma'am. No, Your Honor.

4 THE COURT: Thank you very much.

5 A JUROR: You're welcome.

6 (The juror left the jury room.)

7 THE COURT: Any motion?

8 MS. SHARP: No motion.

9 MR. KELLEHER: No motion.

10 THE COURT: All right.

11 DEPUTY CLERK: There's no motion?

12 THE COURT: No motion.

13 Good morning. Have a seat, please. Tell us
14 your juror number.

15 (The juror entered the jury room.)

16 A JUROR: Wow. Slightly intimidating. 48.

17 THE COURT: 48. We promise, we'll let you walk
18 out of here.

19 A JUROR: I wouldn't be sitting in certain seats
20 in here, I will tell you that.

21 THE COURT: 48, Nathan Trombino?

22 A JUROR: Yes.

23 THE COURT: Okay. What did you answer yes to,
24 if you recall?

25 A JUROR: I was a defendant in a civil lawsuit.

1 THE COURT: Here in Delaware?

2 A JUROR: Yes.

3 THE COURT: About how long ago?

4 A JUROR: Oh, '02 or '03.

5 THE COURT: And what kind of case was it?

6 A JUROR: It was a car accident.

7 THE COURT: So you were involved in the
8 accident?

9 A JUROR: Yes.

10 THE COURT: Okay. And did the case go to trial?

11 A JUROR: It did not. It went to, I think it
12 was arbitration.

13 THE COURT: Okay.

14 A JUROR: Or mediation. One of those. I can't
15 remember.

16 THE COURT: All right. Did you have to testify?

17 A JUROR: No, I did not.

18 THE COURT: Did you testify before in a
19 deposition before whatever that proceeding was?

20 A JUROR: I got a summons by a sheriff. I went
21 into a room and I wasn't in, like, an actual courtroom or
22 trial. It was kind of like a room like this and there was I
23 think some arbitrators in there. I just kind of testified
24 what happened in the car accident and that was it.

25 THE COURT: And do you know what the result of

1 that process was?

2 A JUROR: It was a settlement.

3 THE COURT: Okay. Was it between the, your --
4 did you have insurance?

5 A JUROR: Yes.

6 THE COURT: So was it your insurance company?

7 A JUROR: Yes.

8 THE COURT: They were in a dispute with whoever
9 else was involved in the accident?

10 A JUROR: I pulled out in front of someone
11 because there was like a snowbank that was there and I
12 couldn't see. I pulled out and a car hit me. So she sued
13 the insurance company, State Farm.

14 THE COURT: Okay.

15 A JUROR: Which is my insurance.

16 THE COURT: All right. And whatever the
17 settlement or resolution was, did you have any feelings
18 about it, if you even were told what it was?

19 A JUROR: No. It didn't really affect me at
20 all.

21 THE COURT: Okay. Any other things that you
22 answered yes to?

23 A JUROR: No. That's it.

24 THE COURT: No? Okay. Any questions?

25 MS. SHARP: No, Your Honor.

1 THE COURT: Any questions?

2 MR. KELLEHER: No, Your Honor.

3 THE COURT: All right. Thank you very much.

4 A JUROR: Thank you.

5 (The juror left the jury room.)

6 THE COURT: Any motion?

7 MS. SHARP: No, there's no motion, Your Honor,
8 but I think there's something I should bring to your
9 attention. Karen Pascale, a partner in my firm, believes
10 she may have been an arbitrator in his case. I was
11 concerned about asking and stirring the memory, but I
12 thought I should bring that to your Honor's attention.

13 THE COURT: Yes. I appreciate that. I don't
14 know if that's --

15 MR. KELLEHER: No concerns.

16 THE COURT: No concerns? Okay. All right. And
17 no motion for any other reason?

18 MR. KELLEHER: No motion.

19 THE COURT: Okay. Thank you.

20 (The juror entered the jury room.)

21 THE COURT: Good morning. Have a seat and tell
22 us your juror number, please.

23 A JUROR: Eight.

24 THE COURT: Michael Bender?

25 A JUROR: Yes.

1 THE COURT: Okay. And if you recall, what did
2 you answer yes to?

3 A JUROR: I think one of the questions was if
4 you know somebody that worked for Boeing. My girlfriend's
5 father, Frank Shamiro, he works at Boeing.

6 Also I, I work in a barber shop, so I only get
7 paid -- I don't get any paid time off or any of that. It's
8 my buddy's shop, but I run the shop because he opened a new
9 one. We have a person on vacation this week. With me being
10 out also, it would be a burden to not just me financially,
11 but the shop as well. We work right on the campus of U.D.
12 and we're pretty busy this time of year.

13 THE COURT: All right. Let's talk about both of
14 those things --

15 A JUROR: Okay.

16 THE COURT: -- further. Your girlfriend's
17 father works at Boeing. Where is that?

18 A JUROR: The one right here, I think it's in
19 Philadelphia. I'm not exactly sure what he does there. I
20 know, I think he works on the planes, but I mean, I just --
21 I didn't know if they had -- if it may have been of any
22 relevance. I just wanted to let you know.

23 THE COURT: Has he or your girlfriend ever
24 expressed any strong opinions about Boeing?

25 A JUROR: No, no, nothing like that. I mean, my

1 main thing was the, me with my work. I just figured I'd
2 tell you that, too.

3 THE COURT: Yes. All right. So let's talk
4 about that.

5 A JUROR: And we just recently purchased a house
6 in January, so with the addition of the mortgage and all of
7 them bills, me being out a week would be.

8 THE COURT: Would be difficult?

9 A JUROR: Yes. I mean, I know they say \$40 a
10 day, but, you know --

11 THE COURT: You're doing better than that?

12 A JUROR: It costs like \$60 just to fill up the
13 gas tank.

14 THE COURT: So do you, if you weren't here, what
15 types of hours might you be working this week?

16 A JUROR: I work 9:00 to 7:00, Monday through
17 Friday, and then 9:00 to 4:00 on Saturdays.

18 THE COURT: And is the shop open later than
19 7:00?

20 A JUROR: No. Just 9:00 to 7:00 on Monday
21 through Friday and then 9:00 to 4:00 on Saturday.

22 THE COURT: And about how many people are at the
23 shop?

24 A JUROR: We have six chairs, including me,
25 myself, so we have six barbers, and one guy is out this

1 whole month due to some things he had to straighten up. So
2 with me being out, that will leave us down to four, and
3 everybody is supposed to get at least a day off. So some
4 days you might be looking at three and I mean we're pretty
5 busy in there. I mean, there's days I've done 27 haircuts
6 just one after another.

7 THE COURT: And what about the managerial
8 responsibilities? What do you do?

9 A JUROR: I open and close, so I'm there first
10 thing in the morning. I'm the last one to leave, count up
11 the register at night. And like I said, my buddy just
12 opened a new shop, so he's up there, and I started running
13 this one down here for him.

14 THE COURT: And what will happen? Is there
15 somebody else that would just have to do that, I guess?

16 A JUROR: I have another guy who, I mean, we
17 could give the key to open and close, but, like I said, with
18 somebody already being out and me being out, it would be --
19 I mean, I've talked to my boss. He's aware of it. I mean,
20 I guess they would have to make do. But it would be a lot
21 easier if, you know, if I could be there.

22 THE COURT: Right. All right. Were there other
23 issues you wanted to raise with us?

24 A JUROR: No, that's it.

25 THE COURT: Let me see if there are other

1 questions for you.

2 MS. SHARP: No other questions.

3 MR. KELLEHER: No, Your Honor.

4 THE COURT: Thank you.

5 A JUROR: Thank you. Appreciate it.

6 (The juror left the jury room.)

7 THE COURT: Any motion from plaintiff?

8 MS. SHARP: Yes. I think so because of the
9 hardship he has expressed, he seemed to be pretty emphatic
10 about it.

11 THE COURT: Right.

12 MR. KELLEHER: We would concur.

13 THE COURT: Okay. Well, I will grant that joint
14 request and we'll strike number 8.

15 (The juror entered the jury room.)

16 THE COURT: Good morning.

17 A JUROR: Good morning, Your Honor.

18 THE COURT: Your juror number, please?

19 A JUROR: 18.

20 THE COURT: Deborah Dalton?

21 A JUROR: Yes.

22 THE COURT: Okay. And if you remember, what did
23 you answer yes to, please?

24 A JUROR: I've been on a jury before, selected
25 as Juror 1. And I do have some medical issues that do

1 concern me.

2 THE COURT: Okay. Let's talk first about the
3 jury service.

4 A JUROR: Yes.

5 THE COURT: Was that here in Delaware?

6 A JUROR: It was. It was approximately 11 years
7 ago.

8 THE COURT: Okay. And do you remember what kind
9 of case it was?

10 A JUROR: It was the Devon Mills case. It was a
11 high profile case that was in Dover at the time. I'm sorry.

12 THE COURT: I probably have forgotten if I knew.
13 So some of us may not know. Tell us a little bit about that
14 case. Is it a criminal case?

15 A JUROR: Yes, it was. He was released from
16 prison and was stalking one of the prison guards, and
17 they had found him in the apartment hiding in her closet.
18 And they had seminal fluids and other things that were
19 used for the case. And we were on it, I guess, four to
20 five days.

21 THE COURT: Okay.

22 A JUROR: And then, of course, everything was
23 guilty.

24 THE COURT: Okay.

25 A JUROR: Three felonies and seven misdemeanors.

1 I was Juror 1.

2 THE COURT: Right. So you had to be the
3 foreperson, I guess?

4 A JUROR: I was, yes.

5 THE COURT: Okay. So what was your general
6 feeling about that experience?

7 A JUROR: Initially, the first day I went to the
8 Judge and ask if I could be removed from the case because I
9 didn't feel comfortable knowing he had access to my name and
10 where I was employed, and then once the Judge and the
11 district attorney spoke with me, I felt a little more
12 assured and I stayed with the case.

13 THE COURT: Okay. All right.

14 A JUROR: I was on one other, but I wasn't
15 called. I had jury duty, but I wasn't selected, I should
16 say.

17 THE COURT: Thank you. All right.

18 And you have medical issues. I don't want to
19 pry, but I, what impact might any of them have?

20 A JUROR: I have M.S., multiple sclerosis and I
21 do work and function, but I do have problems periodically
22 with visual or a little bit of vertigo, sometimes with
23 walking.

24 THE COURT: Okay.

25 A JUROR: Trip or fall. But I do function and

1 drive. But it can be an issue at times.

2 THE COURT: Okay. I'm sorry to hear that, of
3 course.

4 A JUROR: Thank you.

5 THE COURT: You've seen a little bit of the
6 layout of the room.

7 A JUROR: Yes, I have.

8 THE COURT: So the jury sits off to my right.

9 A JUROR: Yes.

10 THE COURT: And we're only going to have eight
11 jurors. There are seats I think for 14 in there, and the
12 door from the jury box leads basically into this room. We
13 take a break about 15 minutes morning and afternoon,
14 half-hour for lunch. We could take more breaks, and if
15 someone needed a break just sort of suddenly, they can walk
16 out and, you know, collect themselves in here.

17 With all of that, how would you feel about, you
18 know, spending the week with us?

19 A JUROR: I would be fine. I feel honored.

20 THE COURT: Okay. All right. Anything else you
21 want to talk about?

22 A JUROR: No. That's all.

23 THE COURT: Let me see if others have questions
24 for you.

25 MR. LINDVALL: No questions.

1 MR. KELLEHER: No questions.

2 THE COURT: All right. Thank you very much.

3 A JUROR: Thank you.

4 THE COURT: Go back in the courtroom.

5 (The juror left the jury room.)

6 THE COURT: Any motion?

7 MR. LINDVALL: No.

8 MR. KELLEHER: No, Your Honor.

9 THE COURT: Okay.

10 (The juror entered the jury room.)

11 THE COURT: Good morning.

12 A JUROR: Good morning. How are you?

13 THE COURT: Have a seat, please. Tell us your
14 juror number.

15 A JUROR: 31.

16 THE COURT: Peggy McLaurin?

17 A JUROR: Yes.

18 THE COURT: Okay. If you remember, what did you
19 answer yes to?

20 A JUROR: There was a question regarding if I
21 had ever testified, and approximately seven to eight years
22 ago I did testify in a case regarding identity theft.

23 THE COURT: Identity theft?

24 A JUROR: Yes.

25 THE COURT: Was it a criminal case?

1 A JUROR: Yes.

2 THE COURT: All right. And you testified at
3 trial?

4 A JUROR: Yes.

5 THE COURT: And what was the nature of your
6 testimony?

7 A JUROR: It was actually regarding myself.

8 THE COURT: Were you the victim?

9 A JUROR: Yes.

10 THE COURT: Sorry.

11 A JUROR: Yes.

12 THE COURT: And so you had to appear in court
13 and talk about what had happened to you?

14 A JUROR: Yes, mm-hmm.

15 THE COURT: Was it in front of a jury?

16 A JUROR: No.

17 THE COURT: Just a Judge?

18 A JUROR: Yes.

19 THE COURT: And what was your feeling about that
20 experience?

21 A JUROR: Well, I felt that the Judge ruled
22 fairly in the case. I mean, it was pretty cut and dry that
23 they had proof of what had happened.

24 THE COURT: Okay. You were satisfied with the
25 outcome?

1 A JUROR: Yes.

2 THE COURT: Okay. Anything else you answered
3 yes to?

4 A JUROR: I guess one of the latter questions
5 toward the end regarding hardship.

6 THE COURT: All right.

7 A JUROR: And I guess I'm just thinking about my
8 job as a teacher and being away from my children for a
9 whole, possibly a whole week.

10 THE COURT: You teach what level?

11 A JUROR: First grade.

12 THE COURT: All right. So there's a substitute
13 there today?

14 A JUROR: There's a substitute today.

15 THE COURT: Have you all had spring break yet?

16 A JUROR: No.

17 THE COURT: No?

18 A JUROR: That comes starting Good Friday.

19 THE COURT: Right.

20 A JUROR: And then the following week.

21 THE COURT: All right. And are you -- I know
22 you had some snow days. Are you adding time back on?

23 A JUROR: We have 20 additional minutes added to
24 our school day.

25 THE COURT: Each day?

1 A JUROR: Each day. And then the students will
2 have one-and-a-half days to make up beyond that.

3 THE COURT: In June, maybe?

4 A JUROR: Yes.

5 THE COURT: Okay. All right. So totally
6 understandable. You would rather be there with your
7 students, but there is someone there who is teaching them
8 this week?

9 A JUROR: Yes.

10 THE COURT: To the best they can. Okay. Other
11 issues you wanted to raise?

12 A JUROR: No. That's all.

13 THE COURT: Any questions?

14 MS. SHARP: No, no questions.

15 MR. KELLEHER: No, Your Honor.

16 THE COURT: All right. Thank you very much.

17 A JUROR: Thank you.

18 (Juror left juryroom.)

19 THE COURT: Is there any motion?

20 MS. SHARP: No motion.

21 MR. KELLEHER: No motion.

22 (Juror entered juryroom.)

23 THE COURT: Good morning. Have a seat, please.

24 A JUROR: Hi.

25 THE COURT: Tell us your juror number.

1 A JUROR: My juror number? 21.

2 THE COURT: Carmela Golebiowski.

3 A JUROR: That's correct. Good job.

4 THE COURT: All right. What did you answer
5 "yes" to, please?

6 A JUROR: I don't know the question number but I
7 believe it was knowing somebody working at Boeing.

8 THE COURT: Okay. That's a question. I don't
9 know what number it was either.

10 A JUROR: Okay. I do know somebody pretty well
11 but he retired and was working at Boeing. He is a neighbor.
12 I did speak with him once in awhile, whenever I would see
13 him.

14 THE COURT: Do you know what he did at Boeing?

15 A JUROR: What he did? I do not know exactly
16 what he did. I know his name, but I don't know.

17 THE COURT: Has he expressed a strong feeling
18 pro or con about Boeing to you?

19 A JUROR: Pro or con? Not really. If anything,
20 it's good things. Nothing bad.

21 THE COURT: Do you have any strong feeling about
22 Boeing as a company?

23 A JUROR: No, I don't.

24 THE COURT: Okay. Had you heard of other
25 companies that I listed?

1 A JUROR: No.

2 THE COURT: Okay. Other issues that you wanted
3 to raise with us?

4 A JUROR: No.

5 THE COURT: No?

6 A JUROR: No.

7 THE COURT: Is there any questions?

8 MS. SHARP: No questions.

9 THE COURT: Any questions?

10 MR. KELLEHER: No questions, Your Honor.

11 THE COURT: All right. Thank you very much.

12 A JUROR: All right.

13 (Juror left juryroom.)

14 THE COURT: Is there any motion?

15 MS. SHARP: No motion.

16 MR. KELLEHER: No motion, Your Honor.

17 THE DEPUTY CLERK: Next.

18 (Juror entered juryroom.)

19 THE COURT: Good morning.

20 A JUROR: Good morning.

21 THE COURT: Have a seat, please.

22 Tell us your juror number.

23 A JUROR: 26, I believe.

24 THE COURT: We'll figure it out together.

25 Dolores Lee.

1 A JUROR: Yes.

2 THE COURT: Then you are 26.

3 A JUROR: Okay.

4 THE COURT: And if you remember, what did you
5 answer "yes" to?

6 A JUROR: Oh, dear.

7 THE COURT: That's fine. Do you remember
8 generally any areas?

9 A JUROR: Yes, about Boeing.

10 THE COURT: About Boeing. Okay. Tell us about
11 Boeing.

12 A JUROR: Well, my husband is an electrical
13 engineer. He worked for Lockheed Morrison. He went to
14 Boeing for different meetings and stuff like that. That's
15 about the only thing that I know he had any interest in.
16 Plus the fact I was told -- I got lost and went to the other
17 courthouse.

18 THE COURT: Oh, I'm sorry.

19 A JUROR: That they would dismiss me because I
20 was 70 years old. Does that still hold with this jury?

21 THE COURT: I haven't heard that.

22 A JUROR: Oh. They were going to send me home.

23 THE COURT: Really.

24 A JUROR: At one point.

25 THE COURT: That may be their system. I'm not

1 familiar with that over here. Do you have any concerns
2 about your ability to serve as a juror?

3 A JUROR: No.

4 THE COURT: No. Okay. In terms of, let's go
5 back to Boeing for just a minute.

6 A JUROR: Um-hmm.

7 THE COURT: Do you have any strong feelings
8 about Boeing as a company?

9 A JUROR: No.

10 THE COURT: Had you heard any of the other
11 companies I mentioned?

12 A JUROR: No.

13 THE COURT: No. Okay. Do you remember any
14 other general areas you wanted to raise with us?

15 A JUROR: No.

16 THE COURT: No? Okay.

17 A JUROR: Not that I can remember. No.

18 THE COURT: Okay. Let me see if anybody else
19 has questions for you.

20 MS. SHARP: No, no questions.

21 A JUROR: Nothing?

22 MR. KELLEHER: No, Your Honor.

23 THE COURT: All right.

24 A JUROR: Thank you.

25 THE COURT: Thank you very much.

1 (Juror left juryroom.)

2 THE COURT: Is there any motion from plaintiff?

3 MS. SHARP: No.

4 THE COURT: Defendant?

5 MR. KELLEHER: No, Your Honor.

6 THE COURT: Do they have a rule against older
7 jurors?

8 MR. SCHOELL: I'm trying to remember. Actually,
9 when she mentioned it, there might have been something in
10 the court's juror plan which I didn't bring with me.

11 THE COURT: For our court or for the state? You
12 don't know?

13 MR. SCHOELL: I don't remember specifically but
14 I do think obviously it's an option. It doesn't get you out
15 of the venire, but I know I have seen it and maybe it's in
16 state court.

17 MS. SHARP: I associate it with state court, but
18 my experience is it is inconsistently applied there.

19 THE COURT: Even there?

20 MS. SHARP: You have to know to ask.

21 THE COURT: Interesting. Well, thank you.

22 THE DEPUTY CLERK: That's what I understand,
23 too. I think if you ask they let you out.

24 THE COURT: How about that. Okay.

25 (Juror entered juryroom.)

1 THE COURT: Good morning.

2 A JUROR: Hi. It's hot.

3 THE COURT: Tell us your juror number, please.

4 A JUROR: 7.

5 THE COURT: Deborah Bartell.

6 A JUROR: Yes.

7 THE COURT: All right. And if you recall, what
8 did you answer "yes" to, please?

9 A JUROR: I think there was three. One was the
10 patent, and then the two legal. I'm a paralegal. My patent
11 background, I was a paralegal at one point with Richards
12 Layton and I did paralegal work with one trial. I don't
13 recall, I think it was Judge Farnan. And I was just
14 basically the paralegal that worked that trial, and just the
15 legal background.

16 THE COURT: So you are currently a paralegal?

17 A JUROR: Yes. Now it's corporate litigation.

18 THE COURT: Which firm are you with?

19 A JUROR: Prickett Jones.

20 THE COURT: So you certainly have heard of Young
21 Conaway?

22 A JUROR: Yes, I have.

23 THE COURT: Do you know Ms. Sharp?

24 A JUROR: I don't think so. I have heard the
25 name, so forth, but I don't think we ever worked together.

1 MS. SHARP: That's my recollection as well. I
2 recognize your name, but I don't think we have been on cases
3 together.

4 THE COURT: Do you have any strong feelings
5 about Young Conaway as a firm?

6 A JUROR: No, it's a good law firm.

7 THE COURT: How about Drinker Biddle? Have you
8 heard of them?

9 A JUROR: Yes.

10 THE COURT: Do you know Mr. Schoell?

11 A JUROR: (Looking around.)

12 THE COURT: No?

13 A JUROR: Obviously, I'm looking around. No, I
14 don't.

15 THE COURT: Do you have any strong feelings
16 about Drinker Biddle as a firm?

17 A JUROR: No.

18 THE COURT: Okay. And you used to work at
19 Richards Layton. About how long ago was that?

20 A JUROR: I've been at Prickett for about three,
21 three and-a-half years, so ...

22 THE COURT: Was the trial, the patent trial
23 here, was that during your time at Richards?

24 A JUROR: About the middle. I was at Richards
25 for about three years.

1 THE COURT: What was your impression of patent
2 litigation here in this building?

3 A JUROR: Patent litigation is interesting.

4 (Laughter.)

5 THE COURT: Okay.

6 A JUROR: It was over one little fragment of
7 difference in the patent. Yeah.

8 THE COURT: Do you think you could be fair and
9 impartial to both sides in this patent litigation trial here?

10 A JUROR: Yes.

11 THE COURT: And given your legal training and
12 legal experience, do you think you would be able to follow
13 whatever legal instructions I give you whether you think
14 they're right or wrong?

15 A JUROR: Yes. Otherwise, I will get in a lot
16 of trouble. Yes.

17 THE COURT: Okay. And I guess tell us about
18 your training. Do you have formal training in the law?

19 A JUROR: Yes. I'm paralegal certified, the
20 University of Delaware paralegal certified. And then I have
21 done a variety of backgrounds, did some other things. When
22 I went to Richards, it was basically corporate litigation
23 and then handle IP work. Now it's more briefing and brief
24 filings. That is pretty much is the background I have, and
25 document production and trial prep.

1 My first paralegal job was asbestos litigation.
2 So there was trial prep with that.

3 THE COURT: Is there anything else you wanted to
4 tell us?

5 A JUROR: No, that's it.

6 THE COURT: Let me see if there is more
7 questions for you from the plaintiffs.

8 MS. SHARP: No other questions.

9 THE COURT: Defendants.

10 MR. SCHOELL: Just to make a record. Do you
11 know if you know or met Mr. Todd Schiltz who is my colleague
12 working on this case?

13 A JUROR: I'm really bad with names and faces,
14 but that doesn't sound familiar.

15 MR. SCHOELL: All right. I just wanted to
16 check.

17 A JUROR: I think in the one case Richards went
18 to trial with, it wasn't against any of the firms here.

19 MR. SCHOELL: Thank you.

20 THE COURT: All right. Thank you very much.

21 A JUROR: Thank you.

22 (Juror left juryroom.)

23 THE COURT: Is there any motion from plaintiffs?

24 MS. SHARP: No motion.

25 THE COURT: Defendants?

1 MR. KELLEHER: No.

2 MR. SCHOELL: No.

3 A JUROR: Hello.

4 THE COURT: Good morning. Have a seat.

5 A JUROR: Hi.

6 THE COURT: Tell us your juror number, please.

7 A JUROR: 14.

8 THE COURT: Gloria Cardenti?

9 A JUROR: Cardenti.

10 THE COURT: If you remember, what did you answer
11 "yes" to?

12 A JUROR: It was: Have you ever served as a
13 juror? I didn't know whether to say yes on that. I was an
14 alternative. But there was another question: Has anyone in
15 your family or have you ever been a defendant? And my
16 husband was. He wasn't the main defendant but he was listed
17 in a case -- he is an electrical contractor, and I work for
18 him -- because he was a subcontractor for a builder. So I'm
19 familiar with that.

20 THE COURT: Okay. Let's talk first about your
21 jury service. You were an alternative?

22 A JUROR: About six years ago.

23 THE COURT: Here in Delaware?

24 A JUROR: Um-hmm.

25 THE COURT: Was it here in federal court?

1 A JUROR: Um-hmm.

2 THE COURT: All right. For the record, that's a
3 "yes," right?

4 A JUROR: Oh, yes. I'm sorry. Yes.

5 THE COURT: I don't know how to spell "um-hmm."
6 He probably does.

7 So that was here in federal court?

8 A JUROR: Yes.

9 THE COURT: What kind of trial, if you remember?

10 A JUROR: There was a gentleman charged with
11 mail fraud, using the postal service system.

12 THE COURT: So it was a criminal case?

13 A JUROR: It was a criminal case.

14 THE COURT: And you sat through the evidence and
15 the closing argument, and then they dismissed you before
16 deliberation?

17 A JUROR: Yes. That was a bummer.

18 THE COURT: Well, I was going to ask you how you
19 felt about that. So ...

20 A JUROR: He was guilty. (Laughter.)

21 THE COURT: Did you find out what the jury
22 decided?

23 A JUROR: I kept track, and I saw it in the
24 paper.

25 THE COURT: And he was?

1 A JUROR: He was guilty.

2 THE COURT: All right. What was your general
3 feeling about that experience?

4 A JUROR: It was interesting. I just, I
5 appreciated the way the lawyers brought different things
6 into view because he had some things hidden in different
7 areas, and, of course, the police found it.

8 Just the way that they went about to prove the
9 guilt impressed me. And his nervousness or the people that
10 served as his, I guess ...

11 THE COURT: Lawyers?

12 A JUROR: Yes -- not his lawyers, the people
13 they would bring in as a reference or whatever. Yes, it
14 didn't fly well.

15 THE COURT: Okay.

16 A JUROR: Not in my opinion.

17 THE COURT: All right. And then your husband
18 unfortunately has been named as a defendant.

19 A JUROR: Yes. What happened was it's a builder
20 and a homeowner was disgruntled evidently with his
21 residential home. My husband is a electrical contractor.
22 He was named in the suit. Long story short, after a year
23 and-a-half of haggling with the lawyers, he was removed.

24 THE COURT: He is not a party anymore?

25 A JUROR: He is not a party anymore as of last

1 month. But there was quite a bit of back and forth between
2 the homeowner's lawyer and our lawyer.

3 THE COURT: And did you or your husband have to
4 hire your own lawyer?

5 A JUROR: Um-hmm.

6 THE COURT: Yes?

7 A JUROR: Um-hmm. Yes. I'm sorry.

8 THE COURT: And that sounds like it's been a
9 frustrating experience?

10 A JUROR: Frustrating in the sense, and lawyers,
11 you get billed for every little whip stitch. You know, he
12 sends an e-mail, we send an e-mail back. And it's like I
13 get the bill. I'm the office manager so I was a little
14 frustrated because some of it was really ridiculous.

15 THE COURT: Right.

16 A JUROR: But, everybody makes a buck.

17 THE COURT: Had you heard of any of the lawyers
18 or law firms I mentioned?

19 A JUROR: Actually, Hitchens I believe. There
20 was a name on there and I recognized the name but it wasn't
21 James. Was it James Hitchens?

22 THE COURT: Let me take a look.

23 MR. SCHOELL: James Higgins.

24 A JUROR: Higgins.

25 THE COURT: James Higgins.

1 A JUROR: I know it was Hitchens I was thinking
2 of. I'm sorry. When you said it, I was thinking Hitchens.

3 MR. SCHOELL: There is a Morris James Hitchens.

4 A JUROR: Yes, and it's Hitchens.

5 THE COURT: Was there anything else you wanted
6 to tell us about?

7 A JUROR: No, that's the only reason I said "yes."

8 THE COURT: Let me see if there are other
9 questions for you.

10 MS. SHARP: No, no other questions.

11 MR. SCHOELL: No questions.

12 THE COURT: All right. Thank you very much.

13 (Juror left juryroom.)

14 THE COURT: Is there any motion?

15 MS. SHARP: No, Your Honor.

16 MR. KELLEHER: No, Your Honor.

17 MR. SCHOELL: (Shaking head no.)

18 (Juror entered juryroom.)

19 THE COURT: Good morning. Have a seat, please.
20 Your juror number is?

21 A JUROR: 27.

22 THE COURT: Amy Mabrey.

23 A JUROR: Um-hmm. That's me.

24 THE COURT: That is correct then. And if you
25 recall, what did you say "yes" to?

1 A JUROR: No. 26.

2 THE COURT: All right. Wow. You do remember
3 it.

4 A JUROR: That's because it was next to 27.

5 THE COURT: Right. 26 has to do with the
6 schedule, right?

7 A JUROR: Right.

8 THE COURT: Would this schedule pose a real
9 hardship for you?

10 A JUROR: Yes, it would.

11 THE COURT: Tell us about that.

12 A JUROR: I work for the United States Postal
13 Service. I'm a rural carrier. I work in a very small
14 office. There are only two carriers. I do not have a
15 substitute so I have to borrow from other offices and it's
16 very hard to get a day off. I had to work to get here
17 today. So it would cause a hardship.

18 THE COURT: Okay.

19 A JUROR: I'm needed at my job.

20 THE COURT: And as a result, what, the mail
21 might not get delivered?

22 A JUROR: Correct. It would kick back to your
23 postmaster. And as I say our office, it's small, so it's
24 only one postmaster and she has to do her job.

25 THE COURT: All right. Is there anything else

1 you wanted to tell us? Any other "yeses" that you recall?

2 A JUROR: No.

3 THE COURT: Nothing else?

4 A JUROR: Nothing else.

5 THE COURT: Let's see if there are questions for
6 you.

7 MS. SHARP: No, no questions.

8 THE COURT: Defendants?

9 MR. SCHOELL: No.

10 MR. KELLEHER: No, Your Honor.

11 THE COURT: Okay.

12 A JUROR: Okay.

13 THE COURT: You can step back out.

14 A JUROR: Thank you.

15 (Juror left juryroom.)

16 THE COURT: Is there any motion?

17 MS. SHARP: No motion.

18 THE COURT: Any motion?

19 MR. KELLEHER: No, Your Honor.

20 THE COURT: It seems strange that I would strike
21 a federal employee.

22 MR. HOROWITZ: There is a preemption issue here.

23 THE COURT: I do imagine they are strapped and I
24 think she would be distracted. It's painful to her to think
25 that maybe the mail might not get delivered, so I'm going to

1 sua sponte strike No. 27.

2 (Juror entered juryroom.)

3 THE COURT: Have a seat, please.

4 Tell us your juror number.

5 A JUROR: 25.

6 THE COURT: Elizabeth Krasley.

7 A JUROR: Yes.

8 THE COURT: And if you remember, what did you
9 answer "yes" to?

10 A JUROR: I work for DuPont so I'm actually
11 familiar with patent litigation.

12 THE COURT: All right. Tell us how you are
13 familiar with it.

14 A JUROR: So the project that I'm working on is
15 currently in a case against Gevo. It's the Butamax Gevo
16 case at DuPont.

17 THE COURT: Is that pending here in this court?

18 A JUROR: Yes.

19 THE COURT: And what is your role in that?

20 A JUROR: I'm a scientist on the project. I
21 have never been deposed but I have been questioned by
22 lawyers, and I'm subject to the whole agreement, too, so ...

23 THE COURT: Do you know what the status of that
24 case is?

25 A JUROR: It's ongoing.

1 THE COURT: Right.

2 A JUROR: Well, okay. It's ongoing. The next
3 case will be I think in July.

4 THE COURT: All right. And what was your role
5 as a scientist on the project?

6 A JUROR: I was the strain construction
7 engineer. So I took the microorganism and I added genes. I
8 morphed the biology, that's what I did. So they wanted a
9 lot of my notebooks and files and stuff like that.

10 THE COURT: How long have you worked at DuPont?

11 A JUROR: Seven years.

12 THE COURT: Are you a named inventor on the
13 patent?

14 A JUROR: No.

15 THE COURT: Is it a DuPont patent that is at
16 issue?

17 A JUROR: Yes.

18 THE COURT: Well, do you have any feelings as a
19 result about patent litigation?

20 A JUROR: It hasn't really left me with a great
21 taste in my mouth, to be perfectly honest.

22 THE COURT: Tell us just a little bit more about
23 that.

24 A JUROR: It's just my first -- I used to work
25 in academia, and coming to a business, it's sort of, it's we

1 have to take a lot of extra precautions in order to do our
2 work. And a lot of things that we thought we had inventions
3 for, we had to go to like litigation, that kind of stuff.
4 It's hindered a lot of our work stream. So it's very
5 frustrating on my end as a scientist to have to deal with
6 that kind of stuff.

7 I have never been deposed, so I have never had
8 the pleasure of going through that. I have heard about it.
9 But we have a lot of instruction on what we're supposed to
10 do and that kind of stuff, and I have been in meetings with
11 lawyers, and they have asked me questions. So it's been a
12 little intimidating, to be perfectly honest.

13 THE COURT: So this is in part a patent
14 litigation suit here.

15 A JUROR: Right.

16 THE COURT: Do you think that the frustration
17 you felt in your work might impact how you see things in
18 this very different patent lawsuit?

19 A JUROR: I don't know. I can't say either way.

20 THE COURT: Do you think you might start out
21 rooting for the patentee as opposed to the alleged
22 infringer?

23 A JUROR: I would say that would be the
24 direction I would lean towards, yes.

25 THE COURT: Now, of course, you would be

1 instructed you need to give both sides a fair chance and
2 weigh the evidence, apply the law that I give you.

3 A JUROR: Right.

4 THE COURT: Do you think you would be able to do
5 that?

6 A JUROR: (Pause.) Yes.

7 THE COURT: You think so. Okay.

8 Are there other issues you wanted to talk about?

9 A JUROR: No, that was my main one.

10 THE COURT: Okay. Let me see if the lawyers
11 have any more questions for you before you go.

12 A JUROR: Okay.

13 MS. SHARP: No, no questions.

14 THE COURT: Defendants?

15 MR. KELLEHER: No, Your Honor.

16 THE COURT: All right. You can step out. Thank
17 you.

18 A JUROR: Thank you.

19 (Juror left juryroom.)

20 THE COURT: Is there any motion?

21 MS. SHARP: No motion.

22 THE COURT: Any motion?

23 MR. KELLEHER: Yes. I guess, Your Honor, we
24 would make a motion to strike for cause given her statement
25 she thinks she would start out pro-patentee and she

1 struggled to answer the question that she could be fair.

2 THE COURT: Do you oppose that?

3 MR. LINDVALL: I think she ultimately answered
4 she could be fair, and considering her background I believe
5 she would be fair when she was properly instructed.

6 THE COURT: I'm going to go ahead and grant the
7 motion. I think it could reasonably go very either way, but
8 she did very visibly struggle and she volunteered a lot of
9 frustration with the patent system, not to mention the
10 lawyers. And I don't want to take any risk on that so I'm
11 going to go ahead and strike her. No. 25, it was.

12 (Juror entered juryroom.)

13 THE COURT: Good morning.

14 A JUROR: Good morning.

15 THE COURT: Have a seat, please.

16 Tell us your juror number.

17 A JUROR: 33.

18 THE COURT: Ann Mera.

19 A JUROR: Yes.

20 THE COURT: What did you answer "yes" to, if you
21 recall.

22 A JUROR: I've been a juror before. And my
23 uncle used to actually work on the airplanes before he
24 passed away, and he would go and find out why they crashed.
25 He was responsible for that. And the company that I worked

1 for uses Young Conaway as an attorney.

2 THE COURT: Okay. Let's talk about those things
3 a little bit more.

4 When was your jury service, approximately?

5 A JUROR: Four years ago.

6 THE COURT: Here in Delaware?

7 A JUROR: Yes.

8 THE COURT: Do you remember, state or federal
9 court?

10 A JUROR: I believe state.

11 THE COURT: It wasn't in this building?

12 A JUROR: No. I didn't know this building
13 existed.

14 THE COURT: So then it would have been state
15 court. Was it a criminal case?

16 A JUROR: Um-hmm.

17 THE COURT: And do you remember anything about
18 what type of criminal charges they were?

19 A JUROR: He had, I don't know the names, but he
20 had beaten his girlfriend up and caused a miscarriage.

21 THE COURT: And there was a conviction?

22 A JUROR: Yes.

23 THE COURT: He was found guilty?

24 A JUROR: Um-hmm.

25 THE COURT: How did you feel about that whole

1 experience?

2 A JUROR: I just thought justice was served.

3 THE COURT: All right. And you have an uncle
4 who was an airplane crash investigator?

5 A JUROR: Yes. He has passed away now but he
6 did that his whole life. He would go to all the different
7 sites around the world if a plane crashed, or if there was a
8 problem with one, he would try to figure out why.

9 THE COURT: Did he ever express to you feelings
10 about how airplanes are manufactured?

11 A JUROR: He would just say they were safe.

12 THE COURT: He would say they were safe?

13 A JUROR: Right.

14 THE COURT: And you don't know anything about
15 the process of manufacturing airplanes; correct?

16 A JUROR: Uh-uh.

17 THE COURT: Sorry. For the record.

18 A JUROR: No.

19 THE COURT: You don't know?

20 A JUROR: No.

21 THE COURT: All right. And you've heard of
22 Young Conaway?

23 A JUROR: Yes. I actually do, I work for a very
24 small company and they actually do bill us.

25 THE COURT: Okay. Are you involved in

1 interacting with Young Conaway?

2 A JUROR: I don't believe I am. If I am, I
3 don't know the attorneys that represented us, but we did
4 actually have to go to court about seven years ago, and,
5 yes, I did have to go. And they're the only people that
6 I can think of that would have represented us, and so I
7 would think that would have been at that time. And, yes,
8 I was one of the people that did go to court to represent
9 us.

10 THE COURT: And so you were in court. Did you
11 have to testify also?

12 A JUROR: No, we didn't. We got held over to
13 have to go to court. Like --

14 THE COURT: The trial didn't actually happen?

15 A JUROR: The trial didn't happen because we
16 settled.

17 THE COURT: Okay.

18 A JUROR: Because it would have been less cost
19 efficient to go to trial.

20 THE COURT: What kind of case, just generally,
21 was it? What were the allegations?

22 A JUROR: I work for a credit union and the
23 plaintiff said that we didn't give him his money, and we
24 had, but the statements had cut off. It was an ACH. So he
25 actually received two deposits in the same month the month

1 before.

2 So he had his statement the following month, in
3 September, and thought he did not receive any money. And we
4 had won in the lower court, but then he represented himself
5 in the next step of the courts because he could appeal. And
6 at that point we did win that, yes, we had given him his
7 money, but maybe we owed him some interest. So that is what
8 the case was being held over for.

9 THE COURT: Okay. All right. And you're not
10 certain, but you believe Young Conaway represented --

11 A JUROR: I do believe they are, yes.

12 THE COURT: All right. Do you know Ms. Sharp
13 here from Young Conaway?

14 A JUROR: No. I wouldn't remember anyone. It
15 has been so long.

16 THE COURT: Okay. And given the ongoing
17 interaction with Young Conaway and your company, do you have
18 any feelings about Young Conaway as a firm?

19 A JUROR: No.

20 THE COURT: Do you think their side might start
21 out a little bit ahead in your mind?

22 A JUROR: I wouldn't think so.

23 THE COURT: All right. Other issues or concerns
24 you wanted to raise with us?

25 A JUROR: No.

1 THE COURT: No? Let me see if there are other
2 questions for you.

3 From the plaintiff?

4 MS. SHARP: No questions.

5 THE COURT: From defendant?

6 MR. KELLEHER: Just one question, Your Honor.

7 THE COURT: Sure.

8 MR. KELLEHER: Would it be difficult to reach a
9 decision against Young Conaway's client realizing that their
10 client has been paying them?

11 A JUROR: I wouldn't --

12 MR. KELLEHER: I'm sorry.

13 A JUROR: I think I'm pretty open-minded. I
14 don't think that that would, you know, go either way with
15 me.

16 MR. KELLEHER: Okay. And would there be any
17 difficulty finding against Young Conaway's client in this
18 case, realizing that they might end up having to pay our
19 side any money?

20 A JUROR: I wouldn't think so.

21 MR. KELLEHER: Thank you.

22 THE COURT: All right. Anything else?

23 MS. SHARP: No other questions.

24 THE COURT: All right. You can step out.

25 A JUROR: Thank you.

1 THE COURT: Thank you.

2 (The juror left the jury room.)

3 THE COURT: Any motion?

4 MS. SHARP: No motion. And I just don't have
5 any knowledge one way or another about current
6 representation. It's not something that anyone mentioned.
7 Historically, I do recall in distant past.

8 THE COURT: Okay.

9 MS. SHARP: But that's the most I know.

10 THE COURT: All right. Any motion?

11 MR. KELLEHER: We don't have a motion, Your
12 Honor.

13 THE COURT: Okay. All right.

14 (The juror entered the jury room.)

15 THE COURT: Good morning.

16 A JUROR: Hi.

17 THE COURT: Have a seat, please, and tell us
18 your juror number. That's all right.

19 A JUROR: 28, I believe.

20 THE COURT: 28. Okay.

21 A JUROR: Yes.

22 THE COURT: I've got a list here. You can have
23 a seat. Lance Martin?

24 A JUROR: Yes.

25 THE COURT: Okay. It is 28, then.

1 If you recall, what did you answer yes to,
2 please?

3 A JUROR: I was a juror three, four years ago.

4 THE COURT: Okay.

5 A JUROR: Down the road.

6 THE COURT: In State Court?

7 A JUROR: Yes.

8 THE COURT: All right. Do you remember what
9 kind of case it was?

10 A JUROR: A woman, a woman's purchase was stolen
11 out of her closet, I do believe.

12 THE COURT: Criminal case?

13 A JUROR: Yes.

14 THE COURT: And did you reach a verdict?

15 A JUROR: Yes.

16 THE COURT: Do you remember what it was?

17 A JUROR: Not guilty.

18 THE COURT: Not guilty. How did you feel about
19 that whole process?

20 A JUROR: I don't know.

21 THE COURT: You don't have any good recollection
22 of it?

23 A JUROR: No.

24 THE COURT: Okay. Anything else that you
25 remember answering yes to on my list?

1 A JUROR: I did have tubes in my ears and I do
2 have some hearing loss.

3 THE COURT: Okay. Did you have trouble hearing
4 me this morning?

5 A JUROR: I don't think I did. And I don't
6 think I do all the time, but there's times I think I do.

7 THE COURT: All right.

8 A JUROR: Sometimes I feel I should hear
9 something and I don't, but, you know...

10 THE COURT: Do you feel comfortable if you were
11 having trouble hearing, would you feel comfortable sort of
12 raising your hand or somehow letting us know?

13 A JUROR: No.

14 THE COURT: You would be uncomfortable doing
15 that. Just for the record, you are saying yes. Correct?

16 A JUROR: Yes.

17 THE COURT: So if you were sitting there and
18 things were going by and you couldn't quite hear, you think
19 you would just sit there?

20 A JUROR: Maybe. It depends on how many times I
21 can't hear something. I mean, I feel uncomfortable being
22 here right now.

23 THE COURT: I'm sorry about that. I don't mean
24 to make you uncomfortable. Is it because of the hearing or
25 are there other reasons?

1 A JUROR: No. Just in general. My anxiety
2 level is sky high right now.

3 THE COURT: All right. None of us mean to do
4 that to you.

5 A JUROR: I know.

6 THE COURT: All right. Do you have other
7 specific concerns other than the hearing you mentioned to
8 us?

9 A JUROR: You said something about Germany and
10 France?

11 THE COURT: Yes.

12 A JUROR: I'm not sure exactly what you were
13 talking about.

14 THE COURT: I think the question was, so you
15 might, if you are on this jury, you might hear that some of
16 the companies involved or some of the individuals involved
17 are from other countries, including Germany and France.

18 A JUROR: Mm-hmm.

19 THE COURT: So we wondered if you had any strong
20 feelings about foreigners or Germans or French in
21 particular.

22 A JUROR: My brother is in Germany right now.
23 He was a pilot in the Navy.

24 THE COURT: Okay.

25 A JUROR: So I've been over there a couple

1 times, but I don't have any feelings, you know.

2 THE COURT: Do you think you could be fair to
3 somebody or a company from Germany?

4 A JUROR: I don't see why not.

5 THE COURT: Okay. You mentioned your brother is
6 a pilot?

7 A JUROR: Yes. Was a pilot.

8 THE COURT: Was a pilot?

9 A JUROR: He still works for the Navy. I think
10 he's a contractor now over there.

11 THE COURT: Did he ever -- does he know anything
12 about manufacturing airplanes?

13 A JUROR: I don't know if he knows. I don't
14 know if he knows anything about manufacturing them.

15 THE COURT: All right. He has never told you
16 about that?

17 A JUROR: No. No.

18 THE COURT: All right. Other things you can
19 think of that you wanted us to know?

20 A JUROR: I do have an 85-year-old mother.
21 She's not under my care or anything, but she does need my
22 help from time to time.

23 THE COURT: Okay.

24 A JUROR: I mean for a day, it's not big deal.

25 THE COURT: But over the course of a week, she

1 might need you?

2 A JUROR: Yes.

3 THE COURT: Okay. Anything else?

4 A JUROR: No. That's about it.

5 THE COURT: Okay. I'm going to give the lawyers
6 a chance to ask you questions if they want to.

7 Anything from plaintiff?

8 MS. SHARP: No.

9 THE COURT: No? From defendant?

10 MR. KELLEHER: No, Your Honor.

11 THE COURT: No? Okay. You can go back into the
12 courtroom.

13 A JUROR: Thank you.

14 THE COURT: Thank you very much.

15 (The juror left the jury room.)

16 THE COURT: Any motion from plaintiff?

17 MS. SHARP: Yes. For cause as a result of the
18 concern about hearing and the unwillingness to share with
19 the Court when he wouldn't be able to hear.

20 THE COURT: All right. Any position?

21 MR. KELLEHER: We concur, Your Honor, especially
22 since some people will be speaking with accents, that may be
23 a problem.

24 THE COURT: All right. Okay. Well, even those
25 with perfect hearing sometimes have trouble hearing what's

1 going on in a case like this, and so I will grant that joint
2 motion and we'll strike No. 28.

3 (The juror entered the jury room.)

4 THE COURT: Good morning. Have a seat, please.

5 A JUROR: Good morning.

6 THE COURT: Tell us your juror number.

7 A JUROR: 37.

8 THE COURT: Kenneth Olsen?

9 A JUROR: That's me.

10 THE COURT: Okay. And what did you answer yes
11 to, please?

12 A JUROR: I worked for Boeing.

13 THE COURT: You do or you did?

14 A JUROR: Did.

15 THE COURT: Okay.

16 A JUROR: About six, or about three years ago.

17 I'm out of the C17 simulator IP instructor pilot. I
18 flew Boeing planes. Currently a Fed-Ex pilot flying an
19 airbus.

20 THE COURT: Okay.

21 A JUROR: When I was in the Air Force before I
22 retired for about an hour-and-a-half, I was a military
23 magistrate at Dover Air Force base.

24 THE COURT: Okay. All right. Other issues you
25 wanted to mention?

1 A JUROR: No.

2 THE COURT: No. Okay. So when you worked for
3 Boeing, was that as a pilot?

4 A JUROR: It was a pilot at the T simulators.

5 THE COURT: Okay. Did you have anything to do
6 with the manufacturing?

7 A JUROR: No.

8 THE COURT: Do you know anything about airplane
9 manufacturing?

10 A JUROR: I know where it happens, but besides
11 that, no.

12 THE COURT: All right. Other than Boeing, had
13 you heard of the companies I mentioned?

14 A JUROR: No.

15 THE COURT: And you're currently a pilot?

16 A JUROR: For Fed-Ex.

17 THE COURT: For Fed-Ex. Okay. And you have
18 some experience in the Air Force, you said?

19 A JUROR: Yes.

20 THE COURT: Okay. And through all of that, no
21 manufacturing experience?

22 A JUROR: No.

23 THE COURT: All right. Anything else?

24 A JUROR: No. That's it.

25 THE COURT: No? Let me see if others have

1 questions for you.

2 MS. SHARP: No questions.

3 THE COURT: No?

4 MR. KELLEHER: No questions.

5 MR. SCHOELL: No.

6 THE COURT: Thank you very much.

7 (The juror left the jury room.)

8 THE COURT: Any motion?

9 MS. SHARP: No motion.

10 THE COURT: Any motion?

11 MR. KELLEHER: No motion, Your Honor:

12 (The juror entered the jury room.)

13 THE COURT: Good morning. Have a seat.

14 A JUROR: Hi.

15 THE COURT: Your juror number, please?

16 A JUROR: 39.

17 THE COURT: Christopher Pontani?

18 A JUROR: Yes.

19 THE COURT: All right. What did you answer yes
20 to?

21 A JUROR: Let's see. Do I speak French? I took
22 it in high school.

23 THE COURT: Okay.

24 A JUROR: Just four years. A course in college,
25 but nothing, nothing crazy. I can't speak it fluently.

1 THE COURT: You don't regularly speak French?

2 A JUROR: No, not at all. I would go to

3 Montreal and try to order a beer in the stadium.

4 THE COURT: Did you succeed?

5 A JUROR: Kind of. They all speak English

6 anyway.

7 THE COURT: Okay. Other things that you

8 remember?

9 A JUROR: The company I work for, I currently

10 work for an eight freight forwarder. It's just

11 transportation. Nothing to do with manufacture or anything

12 like that.

13 THE COURT: What is your job there?

14 A JUROR: I guess my job -- basically, I deal

15 with, like, air rates, corporate air freight. So, you know,

16 dealing with our core carriers, dealing with quality issues,

17 rates, stuff like that.

18 THE COURT: You don't have anything to do with

19 purchasing aircraft?

20 A JUROR: No. We don't deal with anything like

21 that.

22 THE COURT: All right.

23 A JUROR: I mean, we have the office in

24 Frankfurt that we deal a lot with. I think we deal with

25 Germans.

1 THE COURT: Do you have any general feelings
2 about doing business with Germans?

3 A JUROR: No. The Germans are Germans. They've
4 got their ways, but we're fine. You know, sometimes you've
5 got to gently persuade them on how to see things your way,
6 but it's not dread, I've got to see the Germans again.
7 Different than Malaysia. That's a different story
8 altogether.

9 THE COURT: We're not asking that about that
10 story.

11 A JUROR: No.

12 THE COURT: But with respect to the Germans, if
13 you heard that some of the companies or witnesses here are
14 German, you can give them a fair chance?

15 A JUROR: Oh, yeah. It doesn't make a
16 difference either way.

17 THE COURT: All right. Other issues you wanted
18 to tell us about?

19 A JUROR: You said schedule-wise. Currently, I
20 have my 9:00 to 5:00. I also deliver newspapers in the
21 early morning.

22 THE COURT: You do that?

23 A JUROR: I do that right now, but that's not an
24 issue for you, is it?

25 THE COURT: Well, we would want you here a

1 little bit before 9:00 each day.

2 A JUROR: That's not a problem.

3 THE COURT: Okay. All right. And then we let
4 you go usually about 4:30 every day.

5 A JUROR: Yes, that's fine.

6 THE COURT: Okay. Any other issues?

7 A JUROR: I'm trying to think. I think that's
8 pretty much it.

9 THE COURT: Okay. Let me see if anyone else has
10 questions for you.

11 MS. SHARP: Does your work involve doing any
12 business with French companies?

13 A JUROR: Not -- I mean, I know we have French,
14 you know, we have an office somewhere in France. I know we
15 have -- deal with, you know, we have, you know, global
16 customers or international customers, but I mean nothing
17 that deals directly.

18 MS. SHARP: Okay. No other questions.

19 THE COURT: Any questions?

20 MR. KELLEHER: No, Your Honor.

21 THE COURT: All right. Okay. You can step back
22 out.

23 A JUROR: Thanks.

24 THE COURT: Thank you.

25 (The juror left the jury room.)

1 THE COURT: Any motion?

2 MS. SHARP: No motion.

3 THE COURT: Any motion?

4 MR. KELLEHER: No motion.

5 THE COURT: All right.

6 (Pause.)

7 DEPUTY CLERK: That's it.

8 THE COURT: That's it?

9 DEPUTY CLERK: Yes.

10 THE COURT: Okay. Well, do you need a minute?

11 DEPUTY CLERK: No, I'm fine.

12 THE COURT: So why don't you tell us who has
13 been stricken, either by me or they weren't here. Everyone
14 who is not in the pool any longer.

15 DEPUTY CLERK: No. 4, No. 6, No. 8, No. 9, No.
16 13, No. 16, 17, 19, 20, 23, 24, 25, 27, 28, 29, 32, 40, 41,
17 43, 46 and 54.

18 THE COURT: Okay. Those are all the ones that
19 are no longer in the pool.

20 Any questions about that from plaintiff?

21 MS. SHARP: No, Your Honor.

22 MR. KELLEHER: There might have been a few that
23 were left in I think that might have been on the list, if I
24 heard correctly. I'm not entirely certain, though.

25 THE COURT: Okay. So the question to you, then,

1 is, anyone that we just said are stricken that you have a
2 question about?

3 MR. KELLEHER: 23.

4 THE COURT: 23 you think may be in?

5 MR. KELLEHER: 24.

6 DEPUTY CLERK: 23 and 24 are absent.

7 MS. SHARP: Some of the no shows.

8 THE COURT: Yes. That was a list of no shows
9 plus stricken.

10 MR. SCHOELL: That matched up with --

11 THE COURT: Okay. They matched up with yours?
12 No issues from defendant?

13 MR. KELLEHER: That's fine.

14 THE COURT: Okay. All right. We're going to
15 take a short recess. There are a couple restrooms here if
16 anybody needs and then I will come back in the courtroom in
17 about five, six minutes and we'll go forward with the next
18 step.

19 Any questions before we do that?

20 MS. SHARP: No questions.

21 THE COURT: From you?

22 MR. KELLEHER: No, Your Honor.

23 THE COURT: Okay. All right.

24 (Short recess taken.)

25 THE COURT: All right, ladies and gentlemen of

1 the our jury pool. Thank you for your patience. We're
2 about to begin the final steps of the jury selection
3 process. What will happen first is my deputy, Mr. Looby
4 here, will randomly draw the numbers of 14 of you. If you
5 hear your number, your jury number called, then please
6 follow his guidance and take a seat where he points to for
7 you to do so up here in the jury box.

8 After we have 14 of you seated, we have what are
9 called peremptory strikes, whereby each side gets to strike
10 three of you for whatever reason or for no reason at all,
11 and that process happens silently through the passing of a
12 clipboard back and forth, so we'll need to be quiet and
13 allow counsel to make their peremptory decisions in the time
14 that they need for that.

15 Once they are done with that, we will, six of
16 you will be removed and we'll end up with our jury of eight.
17 So if you could continue to give us your patience, that will
18 be great. We'll move along as quickly as we can.

19 Mr. Looby, you may go ahead.

20 DEPUTY CLERK: Juror No. 38, please come
21 forward, the first seat in the first row of the jury box.

22 Juror No. 11, the second seat in the first row.

23 Juror No. 3.

24 Juror No. 15.

25 Juror No. 5.

1 Juror No. 21.

2 Juror No. 36.

3 Juror No. 1, first seat in the second row.

4 Juror No. 37.

5 Juror No. 51.

6 Juror No. 53.

7 Juror No. 49.

8 Juror No. 35.

9 Juror No. 48.

10 THE COURT: We'll proceed with the striking
11 process.

12 (Silent striking process takes place from 11:59
13 a.m. until 12:05 p.m.)

14 (Clipboard passed up to the Court, who reviews
15 it.)

16 THE COURT: Are there any objections to the
17 striking process from the plaintiffs?

18 MR. LINDVALL: No, Your Honor.

19 THE COURT: From the defendants?

20 MR. KELLEHER: No, Your Honor.

21 THE COURT: All right. We will go ahead and
22 proceed.

23 THE DEPUTY CLERK: The following jurors will
24 return to the back of the courtroom.

25 Juror No. 11.

1 Juror No. 3.

2 Juror No. 5.

3 Juror No. 1.

4 Juror No. 53.

5 Juror No. 35.

6 (Jurors placed in order in the jury box.)

7 THE COURT: The eight of you in the jury box,
8 bear with us a moment.

9 The rest of you who have spent the morning with
10 us, thank you very much for your time and your patience and
11 your willingness to serve. You are not on our jury, and you
12 are all excused and free to go. Have a good rest of your
13 day. Thank you.

14 (Unselected jurors excused at 12:07 p.m.)

15 THE COURT: All right. For my eight in the jury
16 box, I believe Mr. Looby has passed around materials. Our
17 first step is to administer another oath. So we'll go ahead
18 and do that.

19 (Jury placed under oath at 12:07 p.m.)

20 THE COURT: Thank you. So it's just about
21 lunchtime so in a moment I'm going to let you go temporarily
22 to go get some lunch. Before you head out for lunch, Mr.
23 Looby will show you back to the juryroom. I saw some, if
24 not all of you, back there this morning for our discussion,
25 but that will be sort of your home base during the course of

1 the trial.

2 I'll have plenty to say when we get back after
3 the lunch break, but until then, just a couple quick things.

4 You all have these juror stickers. I know
5 they're not all that attractive but I need to ask you to
6 wear those during the course of the trial. That's so those
7 of us involved in the case and who work at the court know
8 that you are jurors because we're not supposed to be
9 interacting with you during that time.

10 You will learn, if you haven't already,
11 temperature control in this courtroom is very challenging.
12 What frequently happens unfortunately during the course of
13 the day it is too hot and too cold so the best strategy is
14 to bring layers and feel free to put things on, take them
15 off during the course of the day. I apologize in advance
16 for that. And,

17 Finally, although you haven't really heard much
18 about the case, you are not to talk but case to one another
19 or to anybody else until the case is completed. And I'll
20 tell you more about that later, but this is just to let you
21 know during the time you are away for lunch don't talk about
22 the case.

23 We'll let you have until 1:15 to find some
24 lunch. So please be back in our juryroom at 1:15 so we
25 can get started. I will be reading you some additional

1 instructions, and then we'll get to opening statements. But
2 after you are taken back to the juryroom, you will be free
3 to go until 1:15. Thank you very much.

4 (Jury left courtroom.)

5 THE COURT: All right. Before we break, you can
6 have a seat. I'll be looking at the deposition objections
7 over the break. I started looking at them. It looks like
8 some of them may be tied up with an issue I already decided
9 this morning. Am I correct about that? Is that your
10 understanding?

11 MR. LINDVALL: Your Honor. It's the motion in
12 limine.

13 MR. KELLEHER: Yes, Your Honor.

14 THE COURT: All right. So defendants would
15 agree, although you object, that a lot of what you are
16 objecting to already I kind of ruled against you.

17 MR. KELLEHER: Has it mooted, yes.

18 THE COURT: All right. Well, I will get you
19 specific rulings when we come back.

20 Is there anything further before we break, from
21 plaintiffs?

22 MR. HOROWITZ: Nothing further, Your Honor.

23 THE COURT: From the defendants?

24 MR. KELLEHER: Nothing, Your Honor.

25 THE COURT: All right. We will be in recess.

1 (Lunch recess taken.)

2 * * *

3 Afternoon Session, 1:26 p.m.

4 THE COURT: The jurors are all here, so we're
5 going to bring them in.

6 (The jury entered the courtroom.)

7 THE COURT: All right, ladies and gentlemen of
8 the jury. Welcome back.

9 Mr. Golden, I will ask you to pass out some of
10 the materials to our jurors.

11 What you are being handed are copies of the
12 preliminary jury instructions and a sample patent.

13 (The clerk handed materials to the jury.)

14 THE COURT: I'm going to be reading to you the
15 preliminary jury instructions. Feel free to follow along as
16 I read, if you wish. That copy will stay with you during
17 the trial. The sample patent will be referred to in a video
18 that we will be showing you as part of my instruction. I
19 will tell you about the video when we get there in a couple
20 of moments. But let me begin with these preliminary jury
21 instructions.

22 Members of the jury:

23 Now that you have been sworn in, I have the
24 following preliminary instructions for guidance on your role
25 as jurors in this case.

1 Section 1 is called the parties and their
2 contentions.

3 This case is an action involving patent
4 infringement under the patent laws of the United States,
5 unfair competition under the common law and the Lanham Act,
6 trade dress infringement, and intentional interference with
7 prospective economic advantage. The parties are Ateliers de
8 la Haute-Garonne and F2C2 Systems S.A.S., whom I may refer
9 to collectively as plaintiffs or AHG, on the one hand, and
10 Automation-USA Inc. and Broetje Automation GmbH, whom I may
11 refer to collectively as defendants, Broetje, or the Broetje
12 Parties on the other hand.

13 Ateliers de la Haute-Garonne is the owner of
14 United States Patent No. 5,011,339 and United States Patent
15 No. 5,143,216. You may hear the lawyers and witnesses in
16 this case refer to these patents as the '339 patent and the
17 '216 patent, respectively. Together, the '339 patent and
18 the '216 patent may be referred to as the asserted patents
19 or AHG's patents. AHG alleges that the other plaintiff,
20 F2C2 Systems S.A.S., is the exclusive licensee of the
21 asserted patents. AHG contends that each of the Broetje
22 Parties infringes claims 1, 2, and 6 of the '339 patent and
23 also infringes claims 1 and 2 of the '216 patent by making,
24 using, offering for sale and/or selling within the United
25 States devices that embody the inventions disclosed and

1 claimed. The lawyers and witnesses and I may sometimes
2 refer to these devices as the Broetje Parties' cassettes or
3 Automated Fastener Feed Systems, or as the accused product,
4 or the accused products. AHG alleges that Broetje's alleged
5 patent infringement is willful.

6 The Broetje Parties contend that the accused
7 products do not infringe the asserted patents, that they did
8 not willfully infringe the asserted patents, and that in any
9 event the asserted patents are invalid. To fulfill your
10 duty as jurors, you must decide whether claims 1, 2, and 6
11 of the '339 patent and claims 1 and 2 of the '216 patent
12 have been infringed and also whether those claims are
13 invalid.

14 AHG also contends that the similarity in
15 appearance of the Broetje Parties' Automated Fastener Feed
16 Systems to AHG's own products confuses consumers into
17 mistakenly believing that they are purchasing AHG products,
18 when in fact the products were made by the Broetje Parties.
19 As a result, AHG contends each of the Broetje Parties is
20 liable for unfair competition and trade dress infringement.
21 The Broetje Parties deny these claims.

22 AHG also contends that each of the Broetje
23 Parties have intentionally interfered with AHG's prospective
24 economic advantage by selling to customers the accused
25 products. AHG alleges that customers believe that they are

1 purchasing AHG products when they are in fact purchasing the
2 Broetje Parties' accused products. The Broetje Parties deny
3 these claims.

4 Section 2, duty of the jury.

5 It will be your duty to find what the facts are
6 from the evidence as presented at the trial. You, and you
7 alone, are the judges of the facts. You will have to apply
8 those facts to the law as I will instruct you at the close
9 of the evidence. You must follow that law whether you agree
10 with it or not.

11 You are the judges of the facts. I will decide
12 which rules of law apply to this case.

13 Nothing I say or do during the course of the
14 trial is intended to indicate what your verdict should be.

15 Three, evidence.

16 The evidence from which you will find the facts
17 will consist of the testimony of witnesses, and documents
18 and other things admitted into evidence. In addition, the
19 evidence may include certain facts as agreed to buy the
20 parties or as I instruct you.

21 Certain things are not evidence.

22 One, statements, arguments, and questions by
23 lawyers are not evidence.

24 Two, objections to questions are not evidence.

25 Lawyers have an obligation to their clients to make an

1 objection when they believe testimony or exhibits being
2 offered into evidence are not admissible under the Rules of
3 Evidence. You should not be influenced by a lawyer's
4 objection or by my ruling on the objection. If I sustain or
5 uphold the objection and find that the matter is not
6 admissible, you should ignore the question or document. If
7 I overrule an objection and allow the matter into evidence,
8 you should treat the testimony or document like any
9 evidence. If I instruct you during the trial that some item
10 of evidence is admitted for a limited purpose, you must
11 follow that instruction and consider that evidence for that
12 purpose only. If this does occur during the trial, I will
13 try to clarify this for you at that time.

14 Three, anything you see or hear outside the
15 courtroom is not evidence and must be disregarded. You are
16 to decide this case solely on the evidence presented here in
17 the courtroom.

18 In judging the facts, it will be up to you to
19 decide which witnesses to believe, which witnesses not to
20 believe, and how much of any witness' testimony to accept or
21 reject.

22 Four, direct and circumstantial evidence.

23 Some of you may have heard the terms direct
24 evidence and circumstantial evidence.

25 Direct evidence is simply evidence like the

1 testimony of an eyewitness which, if you believe it,
2 directly proves a fact. If a witness testified that he saw
3 it raining outside, and you believed him, that would be
4 direct evidence that it was raining.

5 Circumstantial evidence is simply a chain of
6 circumstances that indirectly proves a fact. If someone
7 walked into the courtroom wearing a raincoat covered with
8 drops of water and carrying a wet umbrella, that would be
9 circumstantial evidence from which you could conclude that
10 it was raining outside.

11 It is your job to decide how much weight to give
12 the direct and circumstantial evidence. The law makes no
13 distinction between the weight that you should give to
14 either one, nor does it say that one is any better evidence
15 than the other. You should consider all the evidence, both
16 direct and circumstantial, and give it whatever weight you
17 believe it deserves.

18 Section 5, burdens of proof.

19 In any legal action, facts must be proven by a
20 required standard of evidence, known as the burden of proof.
21 In a patent case such as this, there are two different
22 burdens of proof that are used. The first is called
23 preponderance of the evidence. The second is called clear
24 and convincing evidence.

25 AHG is accusing the Broetje Parties of patent

1 infringement, trade dress infringement, unfair competition,
2 and intentional interference with prospective economic
3 advantage. AHG has the burden of proving its claims and the
4 amount of its money damages, if any, by what is called a
5 preponderance of the evidence. That means AHG has to
6 produce evidence which, when considered in light of all of
7 the facts, leads you to believe that what AHG claims is more
8 likely true than not. To put it differently, if you were to
9 put the evidence of AHG and the Broetje Parties concerning
10 infringement on opposite sides of a scale, the evidence
11 supporting AHG's claims would have to make the scales tip
12 somewhat on its side in each instance. If the scale should
13 remain equal or tip in favor of the Broetje Parties, you
14 must find for the Broetje Parties.

15 If you find that the Broetje Parties infringed
16 one or more of the patent claims that have been asserted in
17 this case, then as a separate question, AHG has the burden
18 of proving its additional contention that the infringement
19 was willful by clear and convincing evidence. Clear and
20 convincing evidence is evidence that produces an abiding
21 conviction that the truth of a factual contention is highly
22 probable. Proof by clear and convincing evidence is, thus,
23 a higher burden than proof by a preponderance of the
24 evidence.

25 In this case, in addition to denying AHG's

1 claims, the Broetje Parties assert that all of the asserted
2 patents are invalid. The asserted patents, however, are
3 presumed to be valid. The Broetje Parties have the burden
4 of proving that the asserted patents are invalid by clear
5 and convincing evidence.

6 Those of you familiar with criminal cases will
7 have heard the term proof beyond a reasonable doubt. That
8 burden does not apply in a civil case and you should,
9 therefore, put it out of your mind in considering whether or
10 not AHG or the Broetje Parties have met their burden of
11 proof.

12 Six, patent video.

13 Before I describe the parties' contentions
14 further, at this time we are going to show a 17-minute video
15 that will provide background information to help you
16 understand what patents are, why they are needed, the role
17 of the Patent Office, and why disputes over patents arise.
18 This video was prepared by the Federal Judicial Center, not
19 the parties in this case, to help introduce you to the
20 patent system. During the video, reference will be made to
21 a sample patent. A copy of this patent has been given to
22 you, not in your jury binder, but handed to you so that you
23 may follow along with the video.

24 I will ask Mr. Golden to please turn the lights
25 down.

1 Thank you. Go ahead and play the video.

2 (Videotape played as follows.)

3 "JUDGE FOGEL: Hello. I'm Jeremy Fogel. I've
4 been a United States District Judge since 1998 and I'm now
5 the Director of the Federal Judicial Center.

6 As you probably know by now, this is a patent
7 case, so you may be wondering, how can I sit in judgment on
8 a case like this when I'm not entirely sure what a patent
9 is? We hope to answer that concern with this brief video,
10 which will give you some of the background needed to do your
11 job.

12 This case will involve some special issues that
13 the Judge and lawyers will explain to you, but all patent
14 cases involve some basics that you will learn about. This
15 video will discuss what patents are, why we have them, how
16 people get them, and why there are disputes that require us
17 to call in a jury like you. We'll also show you what
18 patents look like.

19 The United States Constitution gives Congress
20 the power to pass laws relating to patents. Article 1,
21 Section 8, Clause 8, allows Congress to promote the progress
22 of science and useful arts by securing for limited times to
23 authors and inventors the exclusive right to their
24 respective writings and discoveries.

25 A patent, then, is an official grant by the

1 United States Government that gives its owners certain
2 rights to an invention. Those include the right to stop
3 others from making, using, selling, or offering for sale the
4 invention that is claimed in the patent. A patent lasts for
5 a specific period of time, usually 20 years from the date
6 that the application is filed by the inventor, but because
7 it takes an average of three years for the Patent and
8 Trademark Office to act on the application, the effective
9 life of the patent is closer to 17 years.

10 A patent represents a bargain made between the
11 government and the inventor. In return for the right to
12 prevent others from using the invention, the inventor must
13 enhance the public knowledge, or what we sometimes call the
14 state of the art, by adding something new and useful to it.
15 A famous example is Thomas Edison's invention of the light
16 bulb. Harnessing electrical power for illumination
17 transformed society and led to many other important
18 breakthroughs.

19 During the lifetime of the patent, its
20 disclosure may inspire new inventions, and after it expires,
21 the invention is free for anyone to use. It is this
22 combination of something new and valuable to the public that
23 justifies granting time limited patent protection to the
24 inventor.

25 A patent is in many ways like a deed to a piece

1 of property. It grants the owner the right to keep people
2 off the property or to charge them a fee, like rent, for
3 using it. And just as a deed indicates boundaries defining
4 the landowner's property, a patent claim defines the
5 patentee's domain. The patent system works because the
6 inventor is required to describe the invention in clear and
7 specific terms so that the public knows what the boundaries
8 of the invention are.

9 Once a patent is issued by the government, it
10 becomes available for public inspection. In that way,
11 anyone who learns of the patent can read it and understand
12 exactly what the inventor invented and the limits of the
13 patents set forth in the claims.

14 Now that we understand what a patent is, let's
15 take a closer look at the term invention. An invention is a
16 new way of solving a problem or a useful new machine,
17 manufacture or composition of matter. The patent process
18 begins in the mind of the inventor, and in particular, when
19 the invention is formulated in the mind of the inventor.
20 Patent lawyers call this conception. This is when the idea
21 occurs to the inventor clearly enough that he or she can
22 write it down and explain it to someone.

23 To qualify for a patent, the invention needs to
24 be new and useful. Also, it must not be obvious to one of
25 ordinary skill in the field. If the inventor believes these

1 requirements are met, he or she will prepare an application
2 for filing with the Patent and Trademark Office, whose
3 headquarters are in Alexandria, Virginia, just outside of
4 Washington, D.C.

5 The Patent and Trademark Office, often called
6 the PTO, is the agency of the federal government whose job
7 it is to examine patent applications, to make sure they were
8 in proper form and comply with the requirements of the law.
9 The inventor can prepare an application for filing with the
10 PTO, but usually, it is drafted by a patent attorney or a
11 patent agent who specializes in what is called prosecuting
12 patent applications. That is the process by which they are
13 evaluated.

14 The attorney or agent works with the inventor to
15 be sure the invention is described and claimed in a way that
16 complies with the law and the regulations of the PTO.
17 98 percent of patent applications are made online using the
18 PTO's electronic filing system, although a few paper
19 applications are still made.

20 When the PTO receives the inventor's
21 application, it is first checked to see if it is complete
22 and complies with all the PTO's application requirements.
23 It then assigns the submission to a Patent Examiner, a staff
24 person with a background in the field or art the invention
25 falls within to evaluate the application and decide whether

1 a patent can be granted.

2 You have been given a sample patent to refer to
3 as you watch this video, so you already have a sense of what
4 a patent looks like. But now let's take a closer look at
5 the three main parts of a patent.

6 To begin with, there are some basic identifying
7 information on the first page. This material is highlighted
8 in your handout.

9 On the upper right side of the page is the
10 number assigned to the patent by the PTO and on the left
11 side is a title that describes the invention and the names
12 of the inventors and sometimes the company to who they've
13 assigned the patent. Also on the left is the date when the
14 patent application was filed, and back on the right, the
15 date when the patent was issued.

16 There also is more detailed information on the
17 first page, including a list of numbers following the
18 caption field of search. These numbers identify previously
19 issued patents the Examiner looked at or searched to make
20 sure the applicant's claimed invention really is something
21 new, not obvious, and thus patentable.

22 Also listed on the first page are what we call
23 references. That is, previous patents or articles that
24 describe the technology or prior art known at the time the
25 application was filed. It may seem strange to you that we

1 call this pre-existing technology prior art even though it
2 has nothing to do with artists. We use the word art in its
3 historical sense, to include inventions and other subject
4 matter reasonably related to the claimed invention. We also
5 refer to the latest technology as state of the art, and we
6 say of someone who can understand and apply the technology
7 that he or she is skilled in the art.

8 The second major part of the patent is what we
9 call the specification, or written description. As is the
10 case in your sample, it is usually the longest part of the
11 patent. It includes an abstract, which is a brief summary
12 of the invention. A background section describes the nature
13 of the problem the invention is supposed to solve, one or
14 more drawings, called figures, that illustrate various
15 aspects of the application, and a detailed description of
16 one or more embodiments of the invention.

17 An embodiment is a specific device or method
18 that uses the invention, such as a particular form of light
19 bulb.

20 The third and most important part of the patent
21 is the claims. These are the numbered paragraphs that
22 appear at the end. The claims are what give the public
23 notice of the boundaries of the invention. They are similar
24 to the description of property you may have seen in a
25 deed referring to precise measurements taken on the ground.

1 The Judge will instruct you further on how any technical
2 or ambiguous terms in the patent claims should be
3 understood.

4 Now that we've discussed the main parts of a
5 patent, let's look at how the PTO processes patent
6 applications, what we referred to earlier as prosecution of
7 a patent application.

8 This process begins when the inventor's
9 application arrives at the PTO. There, it receives a filing
10 date. Under the American Invents Act of 2011, filing dates
11 will determine who is awarded the patent if there are
12 competing valid applications. In 2012, the PTO received
13 nearly 600,000 patent applications and issued more than
14 270,000 patents. After determining that the application is
15 complete, the receiving branch also decides what field of
16 technology an application relates to and assigns it to the
17 appropriate examining group.

18 In order to make that decision, the Patent
19 Examiner usually looks at patents that have been issued
20 previously in the same or closely related fields of art.
21 The Examiner has computer databases that contain information
22 used to accomplish this task.

23 Another part of the job is to decide if the
24 inventor's description of the invention is complete and
25 clear enough to meet the requirements for a patent,

1 including the requirement that the description enables
2 someone of ordinary skill in the field to actually make and
3 use it.

4 However, because the job of examining so many
5 applications is challenging, the law requires the applicant
6 to tell the Examiner whatever he or she knows about the
7 prior art that might be important to the Examiner's decision
8 on whether to allow the patent. We call this the
9 applicant's duty of candor.

10 One way the applicant can satisfy this duty is
11 by bringing pertinent prior art to the attention of the
12 Examiner, either in the original application, or in other
13 submissions called Information Disclosure Statements. In
14 this way, the decisions of the Examiner are based on both
15 the information provided by the applicant and on the
16 information the Examiner finds during his or her prior art
17 search.

18 Sometimes the Examiner concludes that the
19 application meets all the requirements we've discussed and
20 allows the patent to issue at this first stage, but more
21 frequently the Examiner will reject the application as
22 deficient in some respect. This decision will be
23 communicated by the Examiner in what is called an Office
24 Action, which is a preliminary notice to the applicant of
25 what the Examiner finds insufficient or unpatentable. For

1 example, the Examiner may reject certain claims as being
2 unpatentable because a journal article written and published
3 by another person prior to the effective filing date of
4 the patent application disclosed what the applicant was
5 currently claiming. At that point, the applicant prepares a
6 written response, either agreeing or disagreeing with the
7 Examiner.

8 An applicant who agrees with the Examiner can
9 suggest amendments to the application, designed to overcome
10 the Examiner's rejection. Alternatively, an applicant who
11 disagrees with the Examiner's office action can explain the
12 reasons for the disagreement.

13 This exchange of Office Actions and responses
14 goes on until the Examiner issues a Final Office Action,
15 which may reject or allow some or all of the applicant's
16 claims. The overall process is referred to as the
17 prosecution history of the application.

18 The written incoming and outgoing correspondence
19 between the PTO Examiner and the applicant is also called
20 the file wrapper. In the past, these file wrappers were all
21 in paper form as were the submitted applications. Now they
22 are most often electronic and may occasionally be paper as
23 well.

24 Most patent applications filed on or after
25 November 29th, 2000 are published by the PTO 18 months after

1 the inventor has filed his or her application so that the
2 public may inspect it.

3 Once a final PTO office action has occurred
4 and one or more claims have been allowed, the applicant is
5 required to pay an issuance fee and the patent is printed.
6 Then, on the date shown on the upper right-hand corner, the
7 first page of the patent, it is issued by the PTO and the
8 inventor receives all the rights of the patent. That date
9 is highlighted on your sample.

10 Once a patent has issued, the inventor or the
11 person or company the inventor has assigned a patent to can
12 enforce the patent against anyone who uses the invention
13 without permission. We call such unlawful use infringement,
14 but the PTO and its examiners have no jurisdiction over
15 questions relating to infringement of patents. If there is
16 a dispute about infringement, it is brought to the Court to
17 decide.

18 Sometimes in a court case you are also asked to
19 decide about validity. That is whether the patent should
20 have been allowed at all by the PTO. A party accused of
21 infringement is entitled to challenge whether the asserted
22 patent claims are sufficiently new or nonobvious in light of
23 the prior art or whether other requirements of patentability
24 have been met. In other words, a defense to an infringement
25 lawsuit is that the patent in question is invalid.

1 You may wonder why it is that you would be asked
2 to consider such things when the patent has already been
3 reviewed by a Government Examiner. There are several
4 reasons for this.

5 First, there may be facts or arguments that the
6 Examiner did not consider, such as prior art that was not
7 located by the PTO or provided by the applicant. In
8 addition, there is of course the possibility that mistakes
9 were made or important information overlooked. Examiners
10 have a lot of work to do and no process is perfect.

11 Also, unlike a court proceeding, prosecution of
12 a patent application takes place without input from people
13 who might later be accused of infringement, so it is
14 important that we provide a chance for someone who is
15 accused of infringement to challenge the patent in court.

16 In deciding issues of infringement and validity,
17 it is your job to decide the facts of the case. The
18 Judge will instruct you about the law, which may include
19 the meaning of certain words or phrases contained in the
20 patent.

21 So it is your primary duty as jurors to resolve
22 any factual disputes and in some cases, such as infringement
23 and validity, to apply the law to those facts. To prove
24 infringement, the patentholder must persuade you by what is
25 called a preponderance of the evidence relating to the facts

1 of the case that the patent has been infringed.

2 To prove invalidity, the alleged infringer must
3 persuade you by what is called clear and convincing evidence
4 that the patent is invalid.

5 The Judge in your case will explain these and
6 other terms and provide additional specific instructions at
7 the appropriate time.

8 Good luck with your task, and thank you for your
9 service.

10 (End of patent video.)

11 THE COURT: All right. Ladies and gentlemen,
12 we'll pick back up on the preliminary jury instructions.
13 I'm now at page 7. Section 7 is entitled General Guidance
14 Regarding Patents.

15 I will now give you a general overview of what a
16 patent is and how one is obtained. You may have heard some
17 of this in the patent video we just watched.

18 A. Constitutional Basis For Patent Grant.

19 The United States Constitution, Article I,
20 Section 8, grants the Congress of the United States the
21 power to enact laws "to promote the progress of science and
22 useful arts, by securing, for limited times, to authors and
23 inventors, the exclusive right to their respective writings
24 and discoveries."

25 B. Exclusionary Right and Term of a Patent.

1 The United States Patent and Trademark Office is
2 responsible for reviewing patent applications and granting
3 patents. Once the "Patent Office" or "PTO" has issued a
4 patent, the patent owner has the right to exclude others
5 from making, using, selling, or offering for sale the
6 invention throughout the United States for the length of the
7 patent term.

8 A person who, without the patent owner's
9 authority, makes, uses, sells, or offers to sell a product
10 or employs a method that is covered by one or more claims
11 of a valid patent, infringes the patent. A person can
12 also induce others to infringe a patent by suggesting to
13 other persons or companies that they undertake acts that
14 constitute infringement. This is called inducing
15 infringement. A person can also contribute to another's
16 infringement of a patent, which is called contributory
17 infringement.

18 C. The Parts of a Patent.

19 I will next briefly describe the parts of a
20 patent and some of the procedures followed by those
21 attempting to obtain patents. Many of the terms I will use
22 in this description are contained in a "Glossary of Patent
23 Terms" which I have given to you along with a copy of these
24 preliminary instructions. I will read this glossary to you
25 and you should also feel free to refer to the glossary

1 throughout the trial.

2 For an invention to be patentable, it must be
3 new, useful, and, at the time of invention was made, must
4 not have been obvious to a person having ordinary skill in
5 the art to which the subject matter pertains.

6 Under the patent laws, the Patent Office examines
7 patent applications and issues patents. A person applying
8 for a patent must include a number of matters in his or her
9 application, including (1) a detailed description of the
10 invention in terms sufficiently full, clear, concise and exact
11 to enable any person skilled in the art to which the invention
12 pertains to be able to make and use the invention; (2) a
13 disclosure of the best mode of carrying out the invention
14 known to the inventor testimony of filing; and (3) one or
15 more claims.

16 The application includes a written description
17 of the invention called a "specification" and may include
18 drawings that illustrate the invention. The specification
19 concludes with one or more claims that particularly and
20 distinctly define the subject matter that the inventor
21 regards as his or her invention. When a patent application
22 is received at the Patent Office, it is assigned to an
23 Examiner, who examines the application, including the
24 claims, to ascertain whether the application complies with
25 the requirements of the U.S. patent laws. The Examiner

1 reviews files of prior work of others in the form of files
2 of patents and publications. This type of material is
3 called "prior art." Prior art is generally technical
4 information and knowledge that was known to the public
5 either before the invention by the applicant or more
6 than one year before the filing date of the application.
7 Documents found in the search of prior art are called
8 "references." In conducting the search of prior art, the
9 Examiner notes in writing on the file the classes or
10 subclasses of art searched.

11 The compilation of the papers concerning the
12 proceedings before the Patent Office is called the
13 "prosecution history," "file wrapper," or "file history."
14 The Patent Office does not have its own laboratories or
15 testing facilities. The Examiner may "reject" the patent
16 application claims if he or she believes that they are
17 applications for inventions that are not patentable in light
18 of the prior art, or because the patent specification
19 does not adequately describe the claimed inventions. The
20 applicant may then amend the claims to respond to the
21 Examiner's rejections. If, after reviewing the prior
22 art, the Examiner concludes that the claims presented by
23 the applicant patentably define the applicant's claimed
24 invention over the most relevant known prior art, the
25 application is granted a U.S. patent.

1 D. Infringement Disputes and Invalidity.

2 The PTO and its examiners do not decide infringe-
3 ment issues. If there is a dispute about infringement, it is
4 brought to the Court to decide. Here, you are also asked to
5 decide about validity, that is, whether the patent should have
6 been allowed by the PTO. A party accused of infringement is
7 entitled to challenge whether the asserted patent claims are
8 sufficiently new or nonobvious in light of the prior art or
9 whether other requirements of patentability have been met. In
10 other words, a defense to an infringement lawsuit is that the
11 patent in question is invalid.

12 8. Summary of the Patent Issues.

13 In this case, you must decide several things
14 according to the instructions that I will give you at the
15 end of the trial. Those instructions will repeat this
16 summary and will provide more detail. One thing you will
17 not need to decide is the meaning of the patent claims.
18 That is one of my jobs -- to explain to you what the patent
19 claims mean.

20 By the way, the word "claims" is a term of art
21 and I will instruct you on its meaning at the end of the
22 trial. Meanwhile, you will find a definition in the
23 glossary attached to these preliminary instructions.

24 In essence, you must decide:

25 (1) whether AHG has proven by a preponderance of

1 the evidence that Broetje infringed one or more of the
2 asserted claims of the '339 patent or the '216 patent;

3 (2) whether AHG has proven by clear and
4 convincing evidence that Broetje willfully infringed one or
5 more of the asserted claims of the '339 patent or the '216
6 patent;

7 (3) whether Broetje has proven by clear and
8 convincing evidence that one or more of the asserted claims
9 of the '339 patent or the '216 patent are invalid; and

10 (4) what damages AHG is entitled to receive from
11 Broetje.

12 Section 9. Summary of the Non-Patent Issues.

13 In this case, you must decide several other
14 things which do not relate to patents. These other things
15 you must also decide according to the instructions that I
16 will give you at the end of the trial. In essence, you must
17 decide:

18 (1) whether AHG has proven by a preponderance of
19 the evidence that Broetje unfairly competed against AHG;

20 (2) whether AHG has proven by a preponderance of
21 the evidence that Broetje infringed AHG's trade dress;

22 (3) whether AHG has proven by a preponderance of
23 the evidence that Broetje intentionally interfered with
24 AHG's prospective economic benefit; and

25 (4) what damages AHG is entitled to receive from

1 Broetje.

2 Section 10. Conduct of the Jury.

3 Now, a few words about your conduct as jurors.

4 First, I instruct you that during the trial you
5 are not to discuss the case with anyone or permit anyone to
6 discuss it with you. Until you retire to the juryroom at
7 the end of the case to deliberate on your verdict, you
8 simply are not to talk about this case. If any lawyer,
9 party, or witness does not speak to you when you pass in the
10 hall, ride the elevator, or the like, remember it is because
11 they are not supposed to talk with you, nor you with them.
12 In this way, any unwarranted and unnecessary suspicion
13 about your fairness can be avoided. If anyone should try to
14 talk to you about the case, bring the matter to the Court's
15 attention promptly.

16 Second, do not read or listen to anything
17 touching on this case in any way.

18 Third, do not try to do any research or make any
19 investigation about the case on your own.

20 Let me elaborate. During the course of the
21 trial, you must not conduct any independent research about
22 the case, the matters in the case, and the individuals or
23 entities involved in the case. In other words, you should
24 not consult dictionaries or reference materials, search the
25 Internet, websites, blogs, or any other electronic means.

1 Also, should there happen to be a newspaper article or radio
2 or television report relating to this case, do not read the
3 article or watch or listen to the report. It is important
4 that you decide this case based solely on the evidence
5 presented in the courtroom. Please do not try to find out
6 information from any other sources.

7 I know that many of you use cellphones,
8 Blackberries, iPhones, the Internet, and other tools of
9 technology. You also must not talk to anyone about this
10 case or use these tools to communicate electronically with
11 anyone about the case. This includes your family and
12 friends. You may not communicate with anyone or post any
13 information about the case on or through your cellphone,
14 through e-mail, your BlackBerry or iPhone, text messages, on
15 Twitter, through any blog or website, through any Internet
16 chatroom, or by way of any other social networking within
17 sites, including Facebook, MySpace, LinkedIn, and YouTube.

18 Finally, do not form any opinion until all the
19 evidence is in. Keep an open mind until you start your
20 deliberations at the end of the case.

21 During the trial, you may, but are not required
22 to, take notes regarding testimony. For example, exhibit
23 numbers, impressions of witnesses, or other things related
24 to the proceedings. A word of caution is in order. There
25 is generally, I think, a tendency to attach undue importance

1 to matters which one has written down. Some testimony which
2 is considered unimportant at the time presented, and thus
3 not written down, takes on greater importance later in the
4 trial in light of all of the evidence presented. Therefore,
5 you are instructed that your notes are only a tool to aid
6 your own individual memory and you should not compare your
7 notes with other jurors in determining the content of any
8 testimony or in evaluating the importance of any evidence.
9 Your notes are not evidence, and are by no means a complete
10 outline of the proceedings or a list of the highlights of
11 the trial. Also, keep in mind that you will not have a
12 transcript of the testimony to review. So, above all, your
13 memory will be your greatest asset when it comes time to
14 deliberate and render a decision in this case.

15 In addition, please make sure that note-taking
16 does not distract you from your tasks as jurors. You must
17 listen to all the testimony of each witness. You also need
18 to decide whether and how much to believe each witness.
19 That will require you to watch the appearance, behavior, and
20 manner of each witness while he or she is testifying. You
21 cannot write down everything that is said and there is
22 always a fear that a juror will focus so much on note-taking
23 that he or she will miss the opportunity to make important
24 observations. If you do take notes, you must leave them in
25 the jury deliberation room which is secured at the end of

1 each day. And, remember that they are for your own personal
2 use.

3 I will give you detailed instructions on the law
4 at the end of the case, and those instructions will control
5 your deliberations and decision.

6 I also ask that you wear your juror
7 identification tags where people can see them, so persons
8 involved in the case don't accidentally engage you in
9 conversation. Even if it is innocent conversation, it might
10 draw into question your impartiality. So please make sure
11 that people can identify you as jurors in the case.

12 11. Sidebars.

13 During the trial, it may be necessary for me
14 to talk with the lawyers out of your hearing by having a
15 bench conference, which is also called a sidebar. If that
16 happens, please be patient.

17 We are not trying to keep important information
18 from you. These conferences are necessary for me to fulfill
19 my responsibility to make sure that evidence is presented to
20 you correctly under the law.

21 We will, of course, do what we can to keep the
22 number and length of these conferences to a minimum. While
23 we meet, feel free to stand up and stretch and walk around
24 the jury box, if you wish.

25 I may not always grant an attorney's request for

1 a sidebar. Do not consider my granting or denying a request
2 for a conference as any indication of my opinion of the case
3 or of what your verdict should be.

4 Section 12. Course of the Trial.

5 The trial will now begin. First, each side may
6 make an opening statement. An opening statement is neither
7 evidence nor argument. It is an outline of what that party
8 intends to prove, and is presented to help you follow the
9 evidence as it is offered.

10 After the opening statements, AHG will present
11 its witnesses, and Broetje may cross-examine them. The
12 Broetje will present its witnesses, and AHG may
13 cross-examine them.

14 After all the evidence is presented, the
15 attorneys will make their closing arguments to summarize and
16 interpret the evidence for you, and I will give you
17 instructions on the law and describe for you the matters you
18 must resolve.

19 You will then retire to the jury room to
20 deliberate on your verdict.

21 At the end of this trial and before you begin in
22 your deliberations, I will read and give you a copy of
23 written instructions on the law.

24 13, trial schedule.

25 Though you may have heard me say this during

1 voir dire, I want to again outline the schedule I expect to
2 maintain during the course of this trial.

3 This case is expected to take five days to try.
4 We will normally begin the day at 9:00 a.m. We will go
5 until around 12:30 p.m. and, after a 30-minute break for
6 lunch, from about 1:00 p.m. to 4:30 p.m. There will be a
7 15-minute break in the morning and another 15-minute break
8 in the afternoon. If you need a break at some additional
9 time -- perhaps to use the restroom, or perhaps because you
10 are feeling drowsy -- you should try to get my attention or
11 my staff's attention by waiving or standing, and we'll do
12 our best to accommodate you.

13 The only significant exception to our schedule
14 may occur when the case is submitted to you for your
15 deliberations. On that day, the proceedings might last
16 beyond 4:30 p.m. We will post a copy of this schedule for
17 your convenience in the jury deliberation room.

18 Finally, please understand that this is a timed
19 trial. That means the Court has allocated to each party a
20 maximum number of hours in which to present all portions of
21 its case. This allows me to assure you that we expect to be
22 completed with this case by Friday, that is by April 12th.
23 If that's not Friday, I might be off by a day, but by
24 Friday, whatever date that is. Of course, to keep on
25 schedule, it is important that you be here promptly each

1 morning and be ready at the end of each of our scheduled
2 breaks.

3 And, finally, for me, I want to read to you this
4 glossary of patent terms, which should be the last two pages
5 attached to your preliminary instructions.

6 Applicants means the named inventors who are
7 applying for the patent.

8 Assignment means transfer of ownership rights in
9 a patent or patent application from one person or company to
10 another.

11 Claims means that part of a patent which defines
12 the metes and bounds of the invention. These are found at
13 the end of the patent specification in the form of numbered
14 paragraphs.

15 Disclosure or description. That part of the
16 patent specification which explains how the invention works
17 and usually includes a drawing.

18 Elements means the required parts of a device or
19 the required steps of a method. A device or method
20 infringes a patent if it contains each and every element of
21 a patent claim.

22 File wrapper/file history means the written
23 record of proceedings in the U.S. Patent and Trademark
24 Office, also known as the Patent Office or PTO, including
25 the original patent application and subsequent

1 communications between the Patent Office and the applicant.

2 Ordinary skill in the art means the level of
3 experience, education, and/or training generally possessed
4 by those individuals who work in the area of the invention
5 at the time of the invention.

6 Patent application. The initial papers filed in
7 the Patent Office by an applicant. These typically include
8 a specification, drawings, claims and the oath or
9 declaration of the applicant.

10 Patent Examiners means personnel employed by the
11 Patent Office having expertise in various technical areas
12 who review or examine patent applications to determine
13 whether the claims of a patent application are patentable
14 and the disclosure adequately describes the invention.

15 Prior art means any information that is used to
16 describe public, technical knowledge prior to the invention
17 by applicant or more than a year prior to his or her
18 application.

19 Prior art references. Any item of prior art,
20 publication, patent or product, used to determine
21 patentability.

22 And, finally, specification. The part of the
23 patent application or patent that describes the invention,
24 and may include drawings. The specification does not define
25 the invention, only the claims do.

1 That completes the preliminary instructions.
2 We're going to give you your afternoon break just a little
3 bit early today. I know I need a break after all of that
4 reading. So we'll give you about 15 minutes. During the
5 break, no talking about the case and we'll get you back here
6 for opening statements in just a little bit.

7 (The jury was excused for a short recess.)

8 THE COURT: All right. Have a seat for just a
9 minute. I want to give you the rulings on the deposition
10 objections. Then I will give you a break.

11 So we have before us first the defendants'
12 objections to the depositions of Dr. Peters' deposition.
13 The defendants' objections are overruled. In the Court's
14 view, the designations relate to the foreign proceedings and
15 the reasons for change in the products. These are, this is
16 probative evidence and the Rule 403 balance does not favor
17 exclusion. The Court's ruling now is I think consistent
18 with the motion in limine ruling and the ruling given on the
19 objections this morning.

20 Then we have plaintiffs' objections to the
21 counter-designations relating to Mr. Benczkowski. The
22 counter-designation objection with respect to page 140, that
23 objection is overruled, meaning you can play this
24 counter-designation. We find that this counter-designation
25 is necessary and appropriate for completeness purposes.

1 However, the objection to the counter-designation at page
2 154, that objection is sustained as that testimony is not
3 necessary for completeness. Therefore, do not play the
4 counter-designation at page 154.

5 Just as a general matter, be sure when you play
6 the deposition, I assuming you're playing them by video,
7 make sure that you don't interrupt in the middle of a
8 sentence, play the complete question and complete answer and
9 don't play what the attorneys said, you know, in terms of
10 argument. Some of the highlighting, I think, just is a
11 little bit off, so you want to make sure that we don't play
12 things for the jury that they don't need.

13 Any questions before we take a short recess from
14 plaintiff?

15 MR. LINDVALL: No, your Honor.

16 THE COURT: Okay. From defendant?

17 MR. KELLEHER: No, your Honor.

18 THE COURT: All right. We'll take a recess.

19 (Short recess taken.)

20 THE COURT: Bring the jury in.

21 (The jury entered the courtroom.)

22 THE COURT: All right. Welcome back, ladies and
23 gentlemen. We're now ready for opening statements. I will
24 call on the plaintiff for opening.

25 MR. LINDVALL: Good afternoon. My name is Scott

1 Lindvall and I represent the plaintiffs, AHG and F2C2. And
2 with me is my co-counsel.

3 One gentleman I would like to introduce before I
4 start is Mr. Phillippe Bornes. He is one of the inventors
5 of the patent and he's also the founder, co-founder of F2C2,
6 1 of the plaintiffs.

7 Now, the Judge instructed you a little bit about
8 what this case is, but what we believe this case is about is
9 deliberate, unlawful copying, and what the evidence is going
10 to show in this case is that Broetje intentionally copied
11 both the appearance of the cassettes and infringed the
12 patents. We're going to go through, and we'll show you
13 proof of that.

14 Before I go into the story of what happened
15 here, I want to give you a brief roadmap about what I'm
16 going to say. What happened here, Mr. Phillips and his
17 father-in-law, Mr. Auriol, found a problem in the industry
18 with the way of delivering rivets and I will get it into in
19 a little more detail. After several years of working, they
20 came up with an idea and they patented that idea. After
21 they patented it, they went out and tried to sell it.

22 It ultimately, Broetje and AHG and F2C2 came to
23 an arrangement, a business arrangement, where the two of
24 them would sell these items. And what would happen, let me
25 be a little more specific, AHG would sell the product, the

1 patented product, to Broetje, and then Broetje then could go
2 and resell it. And I will go into it in a little more
3 detail on that later.

4 This relationship lasted for about 8, 9,
5 10 years, and somewhere around the end of that relationship,
6 Broetje decided not to use AHG's product anymore and decided
7 to develop their own product. And what we will show you,
8 will show you, the evidence will show is that Broetje
9 decided to copy AHG's product without permission and without
10 AHG's knowledge. And it took several years before AHG even
11 discovered that this was going on, and we'll go through some
12 documents and what have you in a minute to show you that
13 evidence. As a result of that, AHG has been harmed and they
14 are requesting some type of compensation.

15 Now, before we start, let me just show you what
16 the product is. You've probably been curious to see what
17 this whole dispute is about.

18 May I leave, Your Honor?

19 THE COURT: You may.

20 MR. LINDVALL: We're going to call, these are
21 called cassettes. You're going to hear cassettes through
22 the whole period of time. This is AHG's cassette. This is
23 their design and it has tubes in here which are patented,
24 and you'll see these cassettes over and over and over again.
25 And you can look at the design, look how they're colored,

1 the handles and what have you. And we'll talk about the
2 tube and cross-section. This is what the case is about.
3 These are both AHG's.

4 Now, if you could put up slide one, please.

5 Now, who are the parties in this case? Just to
6 give you an understanding of what we're going to be talking
7 about, the first party is AHG. And AHG was founded almost a
8 hundred years ago by Mr. Auriol, and that's not to say
9 Mr. Auriol invented the patent with Mr. Bornes, but it has
10 been in the business has been in the Auriol family for
11 almost a hundred years. It's a family-owned business, has,
12 I don't know, 100, 200 employees, and their business is to
13 make rivets. And rivets, you may or may not know, they're
14 usually pretty fairly small and they use a rivet machine and
15 they're injected into two pieces of metal to attach the
16 metal together.

17 And what AHG is known for is making these rivets
18 particularly in aerospace industry. So as you see these
19 planes flying around, there's a good chance they may be AHG
20 rivets holding them together.

21 Go to the next slide, please.

22 The other party is F2C2 Systems. F2C2 Systems
23 was a company that was created and founded by Mr. Bornes and
24 is wholly owned by AHG. You may ask yourself why that
25 happened, is because F2C2, once they came up with this

1 patented invention, decided to create a separate company to
2 market and sell this product because their main line product
3 is rivets, so they wanted to sell a separate company, to
4 sell this, the invention here that Mr. Bornes had come up
5 with.

6 The defendant, defendants in this case are two
7 defendants, and we'll call them Broetje. One is Broetje
8 USA. It's a subsidiary of Broetje, and the other one is
9 Broetje Germany, which is the parent company located in
10 Germany.

11 And Broetje, just for a little bit of
12 background, was brought by a company called CLAAS Group
13 during the relevant time frame, and that was 2003 to 2012.
14 CLAAS Group is a large German conglomerate.

15 And Broetje manufactures what we call automated
16 riveting machines for the aerospace industry. Remember I
17 told you AHG manufactures the rivets? Well, Broetje
18 manufactures these large machines which punch these rivets
19 into the fuselage or the wing to keep them together. So
20 that's the relationship between AHG and this company.

21 The thing that links this to is you have the
22 rivets on one end and the rivet machine on the other end,
23 but how do you deliver the rivets to that machine? And
24 that's what we're going to be talking about soon.

25 Go to the next slide, please.

1 Let's briefly go over what the claims are in
2 this case so you understand. You saw a lot today about
3 patent infringement and this is a patent infringement case
4 in part. We have two U.S. patents that we'll be discussing
5 throughout this case. We have some experts who will talk
6 about it and there will be a lot of discussion about the
7 patents. It's more than just patents. This case also is a
8 trade dress case. Trade dress case, what we're alleging is
9 that they, Broetje, copied the appearance of our cassette.

10 We believe that the evidence is going to
11 show that our cassette had a certain look and feel. When
12 customers saw it, they knew that was AHG's product and,
13 what we want to show to you is that they copied that
14 appearance.

15 The third claim is unfair competition, which is
16 based on the copying of the appearance.

17 And the last one is intentional interference
18 with prospective economic relations. That's a mouthful,
19 there's no doubt about it.

20 But that essentially says Broetje's wrongful
21 acts prevented AHG from establishing or maintaining business
22 relationships. By them copying us, we'll show the evidence,
23 the evidence will show that that precluded us from
24 developing economic relationships with other customers
25 because of that copying.

1 Next slide, please.

2 Okay. This is a exhibit. I have some slides.
3 You will see my slides. What I'm going to show you mostly
4 today are actual documents from the case that you will see
5 through witnesses. And this is one of the first documents
6 you are going to see.

7 This is a document which is a brochure, but it
8 shows you the components of this system that F2C2 is selling
9 to Broetje, or now selling to other parties.

10 The first and most important component you
11 see are the two components I showed you, now we call the
12 cassette.

13 And the cassette, along with the cassette, we
14 have what is called a loading station. That is where you
15 insert this cassette into the loading station, and the
16 loading station fills these long wound-up tubes, it fills it
17 up with rivets. So the cassette now has a tube filled with
18 rivets, maybe thousands of rivets in there.

19 Once that is filled up with specific kind of
20 rivet, then the cassette then placed inside a rack. And
21 each of these racks, each of these cassettes may have a
22 different type of rivet, and then that is programmed to
23 work in tandem with the rivet machine that Broetje makes to
24 deliver, when necessary, a certain type of rivet to the
25 machine so the machine can then punch that rivet and put

1 those two pieces of metal together, maybe a fuselage, wing,
2 or some other part of the aircraft. And that is how they
3 work together. These three components work together as a
4 function. They work together.

5 So what we have here, again, I'll go through
6 the flow again. We have the filled cassette. The loading
7 station fills the cassette with these rivets, small little
8 rivets. Fills the tubes inside there. The cassette is then
9 placed in a rack. And then the rack with a switch or some
10 type of interface then feeds the different rivets to the
11 robots. These are rivet machines. These are much larger.
12 You will see some very large rivet machines that Broetje
13 makes.

14 So that's the AHG's technology. That is the
15 technology that Mr. Bornes here came up with, he created,
16 and his cassette has the patented aspect of it, and the rack
17 and loading station are also part of his creation.

18 This is his creation in a plant environment.
19 And you can see the rack with the cassettes. You can see
20 the loading station here which loads the different cassettes
21 with rivets. And then you can see the riveter here, the big
22 riveter. And you can see it's part of a fuselage of a
23 plane, and it's riveting the fuselage to the plane to
24 connect the metal. It ultimately comes from the rivets. It
25 goes to the cassette. The cassette then delivers the rivets

1 and goes right into the plane.

2 What is important here, you have to make sure
3 you have the same rivet going in where they're supposed to
4 go. If there is a mistake made and it is the wrong rivet,
5 you can imagine either the rivet machine can jam, which is
6 downtime, or you can possibly put the wrong rivet into a
7 plane and that can be a safety issue. So it's important to
8 have the right rivets and no foreign material are injected
9 into the press. But that is a problem that was solved by
10 Mr. Bornes.

11 Here, on this part of the exhibits, this gives
12 you some of the customers, AHG's customers today that it
13 sells Mr. Bornes' technology. And you can see we have these
14 aircraft manufacturers: Boeing, Airbus -- those are two of
15 the largest commercial aircraft manufacturers -- as well as
16 others.

17 We have some companies you may not be so much
18 familiar with. They're what we call integrators. Broetje
19 is an integrator. They're the ones that make the rivet
20 machine, and they usually sell the rivet machine to the
21 Boeings of the world or the Airbuses of the world. It's
22 possible we can do business with either one of these types
23 of companies.

24 Okay. Let's go to slide 5.

25 Now what I'm going to do is walk you through a

1 timeline of events. And as I go through this timeline, I'm
2 going to show you what the evidence is, how we're going to
3 present the evidence and what the evidence is going to show,
4 and I'm going to show you actual documents as we go through
5 that and show you the story that happened here. Because
6 every litigation, every dispute has a story. I think it's
7 important for you to understand the story.

8 So in 1980, to be more specific maybe 1986,
9 around there, Mr. Bornes and his father-in-law Mr. Auriol
10 realized there was a problem in the industry. Now, I just
11 briefly associated it to you.

12 It used to be these rivets would be delivered to
13 the rivet machine, in these big bowls, vats. They were open
14 to the manufacturing facility. And you can imagine these
15 big facilities, foreign material can drop in these vats.
16 And if the foreign material gets in there and ultimately
17 gets to the rivet machine, like I said, the rivet machine
18 may jam or it may deliver something that shouldn't have
19 gotten into the plane and caused downtime or maybe even a
20 safety issue. And that was a true problem in the industry
21 and you will hear Mr. Bornes talk about it.

22 And so they decided because they were in the
23 business of making rivets, they decided, well, maybe we can
24 come up with an idea how to solve this, because others had
25 tried and failed.

1 What the evidence will show is that Mr. Bornes
2 and Mr. Auriol spent several years experimenting with
3 different ways of doing this, and they came up with a way.
4 You are going to find out it's simple but it's very elegant.
5 And the way they came up was they created a tube, and you
6 will see these tubes in here, and these tubes have a very
7 unique cross-section. They're not the kind of tubes you can
8 go and buy at the hardware store or anywhere else. You have
9 to have them especially manufactured, but they came up with
10 a special shape, a pentagon shape. With that pentagon
11 shape, it allowed there to be grooves, what we call grooves
12 or passageways which allow air to flow around these rivets.

13 Now let me back up for second. You may think
14 what am I talking about here?

15 The tubes can hold a couple thousand rivets. If
16 you just have a plain circular tube and you put the rivets
17 in there, you put compressed air in there to push them
18 through so they can be delivered, they found out it jammed.

19 It's a great idea to use the tube because no
20 foreign material can get in there, so you solve that
21 problem. But they found the problem was whenever they
22 compressed the air, it jammed up.

23 So to distribute the air evenly among all the
24 rivets, they figured out a way to create grooves inside the
25 tube so the air flows around each of the rivets and the

1 rivets could evenly enter into the rivet machine without any
2 jamming in the tube itself.

3 So that was their invention, again, and there
4 will be evidence shown there were other people trying to do
5 the same thing. They failed in the industry. This was the
6 first successful solution for a cassette-based system.

7 So after they came up with that, they applied
8 for a patent, in 1988. They came up with -- as you saw in
9 the invention, when you come up with what you think is an
10 invention, you go to your patent attorney and you apply for
11 a patent. And, ultimately, the patent application, they
12 issued two U.S. patents from that.

13 And if we can show the two U.S. patents.

14 And you will see these by several witnesses,
15 including the experts. And these are the two patents that
16 were issued. And you can see Mr. Auriol and Mr. Bornes as
17 the inventors of these two patents.

18 And we are calling this the '216 and the '339
19 patents. And you will hear that lingo sometimes, too, when
20 we call them that or you will hear them called the AHG
21 patents because AHG is the owner of these patents.

22 Now, I call this the post-invention period. So
23 they have invented something, they've got patents. What do
24 you do with it? You go out and try to sell it.

25 What the evidence will show is that AHG went out

1 and marketed it, and they went to a company called British
2 Aerospace. British Aerospace is a fairly large aircraft
3 manufacturer located in England, and they went to British
4 Aerospace and showed this new way of delivering rivets to
5 rivet machines.

6 If we could show PTX-598, please.

7 And here is a letter. This letter is dated
8 August 20th, 1991. It's a couple years after, well about
9 the same time they got the patents issued, 1991. And the
10 letter is from a Colin Warner who was a representative of
11 AHG. And he is writing to Mr. Holtmeier of Broetje
12 Automation.

13 And if we can turn the page.

14 And attached to this -- and this "PB" is Philip
15 Bornes.

16 It states up here at the top, it states: BAE
17 Preston. BAE Preston is British Aerospace in Preston,
18 England will be buying the riveting machine from this German
19 company.

20 What he is saying is British Aerospace is going
21 to buy Broetje's rivet machine.

22 Okay. If you could go down to the third one.
23 That's right.

24 It says: As you can see from my letter to him,
25 I have sent details -- explaining that this is a proprietary

1 item -- and suggesting he contacts you directly.

2 Now, what had happened here was British
3 Aerospace had seen the Broetje system and they wanted
4 Broetje to use AHG's system with the Broetje machine.
5 Broetje had some of their own feeding systems but they
6 wanted to use AHG. So this is the first commercial interest
7 they got which they got soon after the patents.

8 Can we go back to slide 5, please.

9 So several years went by after the two parties
10 started talking, Broetje and AHG, and they ultimately
11 entered into an agreement. And this agreement was for
12 AHG to provide its cassette-based rivet feeding system to
13 Broetje, so Broetje could then use it on their rivet
14 machines worldwide, where they sell these rivet machines
15 worldwide.

16 And let me walk through quickly the agreement
17 that was entered into between the parties. It's PTX-358T,
18 please. And if we could look at page 10.

19 You will notice some of these exhibits are in
20 French, and then we have English translations. That is to
21 help you out. If you go back to the juryroom and you want
22 to look at these, you will see there are English
23 translations.

24 Here is the first part. This is just a
25 forwarding e-mail where Mr. Holtmeier, the general manager

1 of Broetje, is attaching a draft of the contract with the
2 provisional signature, I guess, or sign.

3 And he states: With signing the contract please
4 let us have more detailed technical information as well as
5 visit to Dassault, and one or two locations of Dassault.

6 Now it's interesting. Please let us have more
7 technical information. One of the things you will learn
8 here is once they entered into the contract, Mr. Bornes,
9 whenever requested or even not requested, sent Broetje lots
10 of technical information about the system and how it worked.

11 Now, if we go to page 12, please.

12 And here is part of the actual agreement. And
13 if we highlight this part here. And the agreement states:
14 AHG has developed, makes and sells a rivet-feed tube
15 system -- that's what I just explained to you -- for
16 automatic riveting machines -- which is what Broetje has --
17 which is the subject of patent protection, and which system
18 allows to feed selected rivets.

19 We are already telling Broetje in 1994 this is
20 subject to patent protection, understanding that this is
21 protected, what we are giving them.

22 If we could turn to page 13, article 2, please.

23 Now, this article essentially says, without me
24 reading it to you, the agreement was that AHG would provide
25 its system to Broetje in Germany and any customers in

1 Germany would be Broetje's exclusive territory. It still
2 allowed AHG to sell its system to anyone else in any other
3 country in the world except Germany, so the exclusivity of
4 this agreement was only in Germany between AHG and Broetje.
5 Again, AHG was free to sell it anywhere else but in Germany.

6 If we could turn to page 14, please. And
7 article 4.

8 Here is another part of the contract. And here,
9 it says: The dealer Broetje agrees not to sell directly or
10 indirectly feed systems with identical or similar tubes to
11 those under this contract and likely to compete with them,
12 using the tube and box principle.

13 The box you will find out is a translation.
14 It's really the cassette. So it's the tube and a cassette.
15 So Broetje is agreeing not to sell directly and indirectly
16 feed systems that compete.

17 If we could go to page 16, please. Article 16.
18 It's page 16.

19 Yes, here it is. Article 11. I'm sorry.

20 It says here: The dealer -- remember the dealer
21 is Broetje -- agrees not to disclose to third parties the
22 confidential documents and information provided to it by AHG
23 in connection with this contract. And this secrecy clause
24 shall survive the expiration of this contract.

25 If we could turn to the other part of this.

1 And it says: In addition, the dealer -- which
2 is Broetje -- agrees not to use, directly or indirectly,
3 such documents and information after the expiration of this
4 contract.

5 So this technical information that Mr. Bornes
6 had been providing or was going to provide to Broetje, Mr.
7 Bornes felt protected. He could give it to them and he
8 wouldn't worry about them competing or them trying to use
9 that information.

10 That was the obligation that Mr. Bornes believed
11 existed the.

12 Now, let's go back to slide 5, please.

13 Now, this relationship after the 1994 contract
14 was entered into lasted for about nine or ten years. So AHG
15 kept on providing these cassette-based systems with the rack
16 and the loading station, cassettes and provided about nine
17 or ten years. Somewhere around 2002, though, the
18 relationship changed.

19 Let me back up for one second. There is one
20 part I forgot to tell you.

21 During this time of eight to nine years, AHG's
22 products started gaining notoriety in the industry, and that
23 is what the evidence will show. The evidence is going to
24 show that the AHG riveting or their technology for rivet
25 distribution machine, cassette-based one, that there is no

1 other cassette-based rivet feeding system that was used
2 either by Broetje or there was no acceptable cassette-based
3 system that was being offered in the industry. And what
4 the evidence will show is that AHG's cassette-based system
5 became a de facto system in the industry.

6 Now, go back to the timeline. You see what I
7 was going to bring up to you. We're now in 2002, and the
8 agreement was entered into in 1994, and the relationship now
9 changed.

10 Let's bring up JTX-66, please.

11 Now, JTX-66 again is an actual document. It's
12 an e-mail from Mr. Maylander who is an employee of Broetje.
13 And he is in their sales department. This was sent on June
14 18th, 2002, and it was sent to Mr. Bornes. You can see
15 Mr. Bornes here.

16 And the subject line says: Our Meeting From
17 Last Week.

18 And it states in there: I have informed
19 Mr. Holtmeier -- now, remember, Mr. Holtmeier was the
20 general manager of Broetje. I have informed Mr. Holtmeier
21 about your activities with Gemcor.

22 Before we move to the next sentence, who is
23 Gemcor? Gemcor is one of those things I call integrators.
24 They're just like Broetje. They make large rivet machines.
25 They're a competitor to Broetje, Gemcor is. Gemcor is

1 located in Buffalo New, York. And they compete, in fact,
2 you will see here, they're referred to as Broetje's main
3 competitors -- the Coke-Pepsi type of thing.

4 So what had happened is AHG came out there and
5 they said -- they came, they told Broetje, by the way, we're
6 going to try to sell to Gemcor. Because remember I told you
7 they were only prohibited in Germany? They could sell
8 anybody else in the world. Mr. Bornes told them that. He
9 wasn't hiding anything.

10 So what does this show? It shows that
11 Mr. Holtmeier is extremely disappointed and unhappy about
12 your behavior. He is upset that now AHG is going to go out
13 and sell to Gemcor even though the contract or the
14 obligation was limited just to Germany.

15 He says: Now you are dealing with our main
16 competitor Gemcor, and with this deal Gemcor gets all the
17 experience we have paid for.

18 So now Broetje is upset because they have been
19 buying this cassette-based system from AHG all along and
20 then AHG decided we should start selling to other companies
21 in the world. We have the right to do that, so let's go out
22 and do it. And they did it, and Mr. Bornes told them about
23 it and said we're going to approach Gemcor. We're going to
24 try to sell it.

25 So that's what happened. And you can see right

1 now that Broetje was not happy.

2 Okay. Now, can we turn to, back to slide 5.

3 So what did Broetje do when they found this out?

4 Broetje began to develop their own cassette-based rivet

5 feeding system using AHG's cassette as an example.

6 Let's turn to JTX-14, please.

7 This exhibit, it's a Broetje document. It's a

8 proprietary document to Broetje, dated June 23rd, 2003.

9 This was a little bit of time after Mr. Maylander's e-mail,
10 about six/eight months, and this is an internal document.

11 AHG didn't know anything about this.

12 What this document is, I'll walk through a
13 couple pages of this. This document is a document where
14 Broetje decided we're going to build our own cassette-based
15 system. But we're going to use AHG as our example in doing
16 that. And that is what the evidence is going to show.

17 Let's go first to page 13.

18 And this is an internal document of Broetje, for
19 the engineers to develop their own. You can see here with
20 the photographs we have here. We have an AHG rack, and over
21 here, part of I believe a loading system which is F2C2
22 Systems. So they're looking and at taking pictures of AHG's
23 system and F2C2's system and rack and helping develop their
24 own.

25 Let's turn to page 15.

1 You can't see this. There is no AHG on here,
2 but you will hear testimony from one of both Broetje's own
3 testimony who says these are close-ups of AHG's technology.

4 If we go to the next page.

5 Again, this is another close-up of AHG's
6 technology.

7 Again, this is an internal development document
8 by Broetje.

9 Let's turn to page 18, please.

10 This probably looks familiar from what I showed
11 you earlier. This is a picture of AHG's cassette, again,
12 being used by Broetje to develop their own cassette-based
13 feeding system.

14 Let's look at page 19.

15 Again, that is a picture of AHG's cassette, used
16 in their internal document.

17 Go to the next page, please.

18 This is the back side of AHG's cassette-based
19 system. Again, in their internal document for their
20 development.

21 The next page, please.

22 Here is a close-up of what we call a separator
23 in a cassette. Again, AHG's product.

24 So you can see about six months after the e-mail
25 where Mr. Holtmeier, the general manager, got very upset

1 because AHG decided to go with Gemcor, Broetje decided to go
2 internal and develop their own using AHG's technology or
3 their own as an example. This was done without telling Mr.
4 Bornes or anyone at AHG.

5 Now, let's turn to PTX-657.

6 Now, this is another e-mail from Broetje, and
7 this is approximately a month after that document where we saw
8 they were already starting development. And Mr. Neugebauer
9 of Broetje is sending an e-mail to Mr. Bornes. And he has a
10 "PS" here which is very interesting.

11 He tells -- this is a Broetje employee who is
12 telling Mr. Bornes. He goes: PS: Just between you and
13 me -- he is not supposed to be saying it -- the company is
14 very, very deeply unsatisfied concerning the situation with
15 Gemcor.

16 They're upset now Broetje is selling to their
17 main competitor although the obligation, there is no
18 obligation that they can't sell to them.

19 There are several discussions in-house, also
20 with our mother company -- now, who is the mother company?
21 That is CLAAS. That is the mother company because they
22 brought Broetje -- how to react on that obstacle. The
23 situation is in that way, that nobody accepts that you are
24 quoting together with Gemcor against us in new projects.

25 Then he goes on to say: It seems to be that

1 there is a possibility that we will quit the relationship
2 with you. You should really think about a possible solution.

3 In other words, you have got to quit selling to
4 Gemcor or we're going to go forward. The interesting thing,
5 this is six months after they started developing their own
6 product, but this again is a "just between you and me"
7 e-mail and telling Mr. Bornes what is going on or what may
8 be going on.

9 Okay. You may ask yourself, okay, so we had
10 this internal document. They went to development. What
11 came out of the development?

12 Your Honor, may I?

13 THE COURT: You may.

14 (Mr. Lindvall gets a couple cassettes.)

15 MR. LINDVALL: This is AHG's cassette I showed
16 you before. This is Broetje's cassette that came out of
17 development. The handles.

18 So what came out of the development, that
19 internal development by using AHG as an example was almost
20 an identical copy.

21 Okay. Let's go to slide 5, please. I'm almost
22 done.

23 So let's fast forward a couple years to about
24 2005. At this point in time, Broetje, as we found out, has
25 already developed the cassette. They still hadn't told us.

1 And in some time in 2005, Mr. Bornes happened to be going
2 through a German plant and saw a Broetje cassette, and it's
3 the first time he had ever seen one or heard they were doing
4 this.

5 So he was obviously surprised. You will hear
6 his testimony. He will be the first person testifying maybe
7 today or tomorrow morning, and you will hear his testimony
8 about this.

9 So also in 2005, Broetje terminates the
10 agreement with AHG. He says the contract, we're going to
11 terminate it.

12 So once we found out they're going to terminate
13 the agreement and that we discovered they were having a
14 cassette now -- if we could look at PTX-547, please. And if
15 we could look at page 8.

16 This is a letter, by the way, from AHG's lawyers
17 because at that point in time, they really, Mr. Bornes
18 discovered that Broetje cassette and saw it was just like
19 his, they sent a lawyer -- they sent a letter, had the
20 lawyer sent a letter to Broetje saying don't be doing this,
21 your cease-and-desist type letter.

22 You see right here it says this letter also
23 serves as a formal notice to cease all acts of infringement
24 or unfair competition in this regard, as my client
25 hereinafter reserves the right to the claims that it might

1 bring before the courts.

2 So AHG is upset so they brought this action.

3 This is in 2005, this letter comes out.

4 So let's just go back. Let's go to PTX-567 now.

5 Now, here is another internal document. And if
6 you could go to page 2.

7 This is from -- go back to that first, please.

8 Let me explain where this comes from. This
9 comes from a Dr. Budach. Dr. Budach is an internal German
10 patent lawyer who works at CLAAS. Remember, CLAAS is the
11 mother company of Broetje. And it is to an employee at
12 Broetje. And this is in September 2005 after they finished
13 developing their product, and it's called Design of Tube
14 Cross-Section For Rivet Feeder System.

15 If we could go to the page 2. No, the next. Go
16 back to that first page.

17 I'm sorry. Go to the next page.

18 And it says it right here. And Dr. Budach, as a
19 German patent lawyer, is responding to a query from the
20 Broetje lawyer and he says: The use of a round tube with
21 incorporated groove first of all represents an infringement
22 of the patent in question.

23 The patent in question they're talking about
24 is the AHG European patent. Now, this is an internal memo
25 between CLAAS and Broetje. The tube they're talking about

1 is the tube inside the cassette that I told you that they
2 have a patent on. So looking at the cross-section.

3 And later on, Dr. Budach concludes with: With
4 deliberate use of third-party property rights, CLAAS
5 internal management approval would have to be obtained. We
6 could possibly discuss briefly by phone beforehand whether
7 that is necessary here.

8 So after the fact, after they have developed and
9 after the cassette has been found, they're delivering in
10 Germany, Mr. Bornes has discovered, they get the legal
11 department on there and figure out what their exposure is,
12 whether they can keep on doing it, what they're going to do,
13 or how they're going to do it.

14 They even have the option is what the evidence
15 shows here that they could just go ahead and keep infringing,
16 See what happens. See what AHG does.

17 Okay. Let's go back to slide 5, please.

18 Now, AHG filed suit. What they ultimately did,
19 AHG, to protect their rights they filed suit in Germany in
20 2006. You see up here.

21 And then when they filed suit in Germany, they
22 also discovered that Broetje now is marketing cassettes in
23 AHG's backyard in France: Right here in 2006, it's
24 discovered again they're now selling in France.

25 The next one.

1 And then in 2007, AHG discovers Broetje is now
2 selling cassettes in the United States. And what you will
3 hear about the evidence with that, it's more difficult to
4 discover that. And you will hear Mr. Bornes talk about it.
5 It's difficult for a French national to walk into a Boeing
6 plant or any other type of plant in the United States
7 without being escorted, going through all types of security.
8 It's not like they can go and look around and see if there
9 is a Broetje cassette or not. But they did ultimately
10 discover one in 2007.

11 Now, what was the result of the cassette in
12 France? They filed an action in 2008 in France because of
13 that. And then this action that we're here today was filed
14 in May 2009, to stop the wrongful conduct here in the United
15 States.

16 So where does the dispute stand today? Well,
17 fairly recently, the French court came out with a judgment.

18 And if we could pull up PTX-613T. And if we
19 could go from the fourth paragraph at the bottom, please.

20 And this is the finding by the French court. It
21 says: Stating that by copying in a servile manner the
22 appearance of the cassettes produced and commercialized by
23 companies AHG and F2C2 system, thus creating a risk of
24 confusion with the activities of these two companies,
25 Broetje Automation GmbH -- which is Germany -- committed

1 acts of unfair trading with regard to AHG and F2C2 System,
2 engaging its responsibility grounded in the provisions of
3 so-and-so.

4 This is not U.S. law, and the Judge will tell
5 you that. But this is what the French court recently found
6 in late 2012.

7 So what happened now? Now they have a judgment
8 against them. The French court has found it copied,
9 identical design. They also found they infringed the French
10 patent. I haven't shown you that part.

11 So what has Broetje finally done now? They
12 started developing in 2003 and today it's 2014.

13 May I approach, Your Honor?

14 THE COURT: You may.

15 (Mr. Lindvall picks up two cassettes.)

16 MR. LINDVALL: This is the one they were using
17 for a number of years. You saw it a copy of AHG and now
18 what they have done, they changed the appearance, the color,
19 handle, the naming and what have you.

20 This is what they could have done a long time
21 ago, but the French court, after this, now this is what
22 they're going to be producing worldwide now. And as you can
23 see, there is a lot of difference there.

24 Okay. Let's go to slide 67. I'll wrap this up.

25 Now, you are going to hear from a couple

1 witnesses from us. We don't have a lot of witnesses, we
2 have some.

3 Mr. Bornes, sitting at the table, you are going
4 to hear from him first. He is going to go through this
5 story and he is going to tell the story from his viewpoint,
6 his eyes, what happened to him, and what it did to the
7 company, what it did to F2C2, what it did to him personally.
8 As you recall, he is the founder and technical manager of
9 F2C2, one of the inventors of the patent.

10 The other person you are going to hear from, just
11 a couple others but is Dr. Harri Kytomaa who is an expert, and
12 he is going to tell you why there is infringement here. And
13 as you can see, he is well credentialed. He has a Ph.D. from
14 CalTech. He was a professor at MIT, and he is a technical
15 expert who will support the testimony of Mr. Bornes.

16 You also will hear from a witness that is
17 related to damages and another witness about the sales, but
18 that will be it.

19 Thank you very much.

20 THE COURT: Thank you.

21 I'll now call on defendants.

22 MR. KELLEHER: Thank you, Your Honor.

23 Hello, ladies and gentlemen. My name is Patrick
24 Kelleher. I represent the defendants in this case Broetje
25 Automation USA and their parent company, Broetje automation

1 GmbH.

2 With me at counsel, I have one of my clients,
3 Ken Benczkowski who is the president of Broetje Automation
4 USA, and my fellow colleagues as well.

5 There are two principal accusations that have
6 been made against my clients. One is that they have copied
7 the look of the AHG and F2C2's products. The other is that
8 they have copied how F2C2 and AHG's products work.

9 The short answer to both of those accusations is
10 no and no.

11 As to the look, the evidence is going to show we
12 did not copy them, they copied us.

13 As to how it works, my client scrupulously made
14 sure we did not copy their patents.

15 As Mr. Lindvall has shown you, we knew about
16 their patents. They told us about them. We went and got an
17 attorney. When these things were being designed in 2003, we
18 got advice so we would not infringe their patents. And you
19 will see we purposely made a change in the tubes on the
20 inside of our cassette to avoid their patents. That is
21 called designing around. It's encouraged in our law and
22 that is what we did.

23 And then later on we went into the German courts
24 and we won. You heard about the French court judgment. In
25 the French courts, we have been found not to be infringe and

1 their patents were found to be invalid.

2 So the look of the cassettes. That is what is
3 called trade dress.

4 So what they're alleging is that my client
5 purposefully chose the way our cassette would look to match
6 the way their cassette looks in order to confuse customers
7 into thinking that they're buying from them rather than from
8 us.

9 The evidence will show the truth is the exact
10 opposite of that.

11 Now, in a minute we'll tell you the back story
12 so you will understand why my clients felt the need to
13 ultimately design their own cassette, but let me briefly
14 summarize what is going on here.

15 Your Honor, may I step into the well?

16 THE COURT: You may.

17 (Mr. Kelleher retrieves a cassette.)

18 MR. KELLEHER: So this is the Broetje cassette.
19 As you will see, it's metal on all five sides except for the
20 very top.

21 My client first sold that cassette in the United
22 States in 2004 to a company that makes aircraft called
23 Vought in Dallas. Now, what happened after that?

24 Your Honor, may I step into the well again?

25 THE COURT: You may.

1 (Mr. Kelleher gets another cassette.)

2 MR. KELLEHER: In 2005, we have this AHG metal
3 cassette as well that Mr. Lindvall says we copied.

4 And one more time, Your Honor?

5 (Mr. Kelleher gets another cassette.)

6 MR. KELLEHER: Now, the problem with that is
7 that when my client sat down in 2003 to design their own
8 cassette, their product didn't look anything like that metal
9 box. This plastic box is what they used to make. This is
10 what they used to sell to us, and this is what we used to
11 incorporate into our product.

12 We purposely did not copy this. We came up with
13 the idea of surrounding it with metal so it would be more
14 sturdy, because the handle tended to crack here when you
15 pulled this in and out of the rack. We did several other
16 things as well.

17 This, the separator here that was described, my
18 client put that on the inside so it would be more safe when
19 it is pulled in and out of the rack.

20 Now, we also redesigned the tube on the inside.

21 So in order to win on their trade dress claim,
22 they're going to have to prove that they had the look and
23 use in the United States first and we then copied them and
24 confused people.

25 The problem is we had the look in the United

1 States first in 2004. They changed their design afterwards
2 to look more like ours, and now they're saying we copied
3 them.

4 So the way it works. The inventors described
5 their invention as being a way to be sure you can get rivets
6 to flow down a tube without sticking. And the idea is to
7 have grooves or passageways along the walls so the air can
8 pass all the way up the tube to the very first fastener.

9 These are a few of the examples of what the
10 tubes look like in their patent. You heard Mr. Lindvall say
11 that before the patent application was filed, the inventors
12 came up with a pentagon tube. There's no pentagon tube
13 disclosed anywhere in the patent.

14 I got a few slides ahead of myself. Now, this
15 is what Broetje's tubes look like. I call this a soft
16 pentagon. As you heard from the video, it's going to be
17 your responsibility to determine whether or not the claims
18 of their patents, the numbered paragraphs at the very end,
19 cover what it is that my client is doing, and the way you'll
20 be doing that is, you'll be looking at the particular
21 elements written out in the patents. There are a number of
22 elements in these patents, but there are three elements in
23 particular that are required by these patents you find are
24 not in my client's tubes.

25 The rivet head has to be substantially equal to

1 the area of the cross-section on the inside of the tube and
2 that's not true for my client's product. The ratios are
3 like 135 percent or 140 percent.

4 The passageway or groove has to open into the
5 hollow center. The problem is that, looking here in the
6 center, the five points of our pentagon that they say are
7 the grooves of passage ways don't open into anything.
8 They're part of the main channel.

9 Last, the axis of the rivets has to be pointing
10 in the same direction as the axis of the tube that they are
11 sitting in, and the problem is that does not happen in my
12 client's tubes. Instead, you'll find that they zig-zag.
13 The axes are pointing in all different directions rather
14 than the one axis of the tube.

15 Now, you heard the word "invalid" described in
16 the Judge's instructions and the video, and what that means
17 is that these are patents that should not have issued from
18 the Patent Office. There are things the Patent Office
19 didn't know about or the Patent Office made a mistake with
20 what they did know about.

21 This is a patent application from England from
22 1980 called Shinjo or Komaki. Those are two of the
23 inventors. Now, the Patent Examiners did know about this
24 particular patent application when they approved my
25 opponent's patent, but you'll see it's a coiled-up tube

1 filled with fasteners. And there's this passage, this text
2 in the Komaki/Shinjo application, saying the channels 2A are
3 dimensioned so that there is sufficient space for the
4 compressed air to exert a force on the individual nuts 8,
5 thereby ensuring a smooth movement towards the other end, 5,
6 of the tube 2.

7 So what I mentioned earlier, what the inventors,
8 Mr. Auriol, Mr. Bornes say was their invention finding a way
9 to use passageways or grooves along the wall to get air all
10 the way up to the tube to the very first path there is
11 something that has already been described a decade earlier
12 in this piece of prior art in England. We'll talk more
13 about this piece of prior art during the trial.

14 There's another piece of prior art you will
15 hear about. This is a U.S. patent from 1968 to a gentleman
16 named Brosene. This is a cassette filled with tubes, filled
17 with rivets. So you will see that people were using
18 cassettes filled with tubes, filled with rivets in this
19 country for decades before it was supposedly invented by my
20 opponents.

21 So, ladies and gentlemen, that was a quick
22 summary of what I think the evidence is going to show. Let
23 me give you a little bit more detail now.

24 So who are my clients? Broetje Automation GmbH
25 and Broetje Automation-USA. My clients make and sell these

1 gigantic machines to companies like Boeing and Airbus and
2 Spirit and Gulf Stream that they use to manufacture
3 aircraft. So here, for example, is one machine that
4 my client sells to manufacture the Boeing 787 Dreamliner.

5 You'll note the man -- whoops, standing down
6 here. That's to give you a sense of the size of these
7 machines that we sell.

8 Now, one of the components of this machine is
9 the rivet feed system, so that's the system that's used to
10 select a particular size fastener. And move it into place,
11 and then the fastening machine blows that rivet all the way
12 up to the top of this machine (indicating), to the rivet
13 here, and they put together two pieces of a fuselage.

14 Now, the plaintiff company AHG used to make a
15 rivet feed system. As Mr. Lindvall mentioned, around the
16 year 2000-2001, the company F2C2 came into existence and
17 took over the business completely, and my client stopped
18 dealing with AHG and only dealt with F2C2 after that.

19 So we dealt with them for a number of years as
20 was mentioned. We gave them a number of suggestions over
21 the years to improve the product they were selling to us
22 because we had a lot of problems with it. Those
23 improvements got incorporated into their system to make it
24 work better.

25 And we would have been willing to keep working

1 with them, but despite the things we had taught them and
2 they incorporated into their product, there were still so
3 many problems that we had from them in terms of the
4 workmanship of the products, their quality control, their
5 delivery times, their responsiveness for repairs, and
6 repeated problems with rivets sticking in the loading
7 stations and in the cassettes and in the racks that they
8 slide into. And when that happens, an entire assembly line
9 can shut down.

10 You can imagine what Boeing does when an
11 assembly line shuts down. They are responsible for building
12 multiple planes a week that they sell for tens of millions
13 of dollars. They do not react kindly to my company when
14 this machine shuts down because there's a problem with the
15 rivets.

16 And then to make matters worse, on the side,
17 F2C2 started selling to our chief competitor, Gemcore, and
18 Gemcore is now getting the benefit of all of the things we
19 have taught to F2C2 over the years to make their product
20 work better. That's basically giving away our know-how to
21 our chief competitor after the investment we had put into
22 it.

23 So let me give you some details of some of the
24 problems we had during the history.

25 Around 2001, 2001-2001, we started sending

1 formal reports called fault reports to F2C2 because of the
2 problems we were having with their machines. And you will
3 meet the author of most of these reports, a man named
4 Mr. Neugebauer, an e-mail from whom you saw during
5 Mr. Lindvall's presentation. Mr. Neugebauer is actually
6 here in the courtroom right now.

7 So here are two examples of problems that we
8 had. On this first one, it's a fax that was sent in 2001,
9 and it says, Urgent. Rivet feed problem. Help us. The
10 machine DASA standstill. DASA is a company that today is
11 known as Airbus. Their entire riveting machine is standing
12 still and not working because there's a rivet stuck in it
13 and we are pleading for help.

14 The second fault report, No. 10 down here
15 (indicating), this is for a company called Shorts Brothers,
16 now called Bombardier. They're now in Ireland. And we have
17 multiple cassettes that are having a problem because the
18 fastener sticks in the microactuators. That's the separator
19 at the end, a chamfer problem. That's things rubbing
20 together. Rivets stuck during loading process in the
21 loading fitting, so meaning we can't fill up the cassettes
22 so we can't make the automation process, the assembly
23 process, keep going.

24 Let me give you another example. This is Fault
25 Report No. 3. This customer, it says Wichita. That's

1 Boeing, Wichita. All of these cassettes, they were
2 delivered for use with the Boeing machine, and they were
3 manufactured so poorly, they did not even slide into the
4 F2C2 rack they are supposed to slide into.

5 Over three years we sent more than 50 of these
6 formal fault reports to F2C2. There are also many e-mails
7 and faxes and phone calls and think of those fault reports.
8 If we sent 50 over the course of three years, that means
9 every three or four weeks we had a problem so serious, we
10 had to send one of these things. This was just intolerable
11 for our customers, Boeing and Airbus and Vought and Spirit
12 and Gulf Stream, and our name was on the line and so we have
13 to do something about it. We had to make our own system to
14 replace this system, which was hurting our reputation with
15 our customers, and we were forced to undertake our own R&D
16 project in 2003.

17 So as I mentioned, at that time the cassette
18 that we bought, we bought from F2C2 was this plastic
19 cassette (indicating) with these numbered counters on the
20 front and separator on the outside and this, this string to
21 hold the cap in place on the back. And just in case you
22 missed it, in the middle of this cassette it says, F2C2
23 system AHG. So everyone knows where that's from.

24 So that's what we had to look at. We decided we
25 need to replace it with something that met our quality

1 requirements. And so this is what we came up with. We
2 decided to make it metal, as I mentioned, on all five sides
3 so it's more sturdy.

4 It's difficult to see on this particular version
5 because of this tab, but we'll show you ones that don't have
6 this tab over it. But we moved the separator on the inside
7 so it's less likely to be injured. You'll find out we made
8 a different tube. And you'll notice we don't say AHG F2C2
9 on this cassette that we sell. We put the Broetje on it, on
10 the front.

11 And then a year later, so that was 2004 we
12 started selling that, as I mentioned, in Dallas to a company
13 called Vaught in 2004. And then in 2005, this gets released
14 by AHG F2C2. As you'll see, they are selling something that
15 is metal on all five sides. It does not have the Broetje
16 name on it, of course. It has their name. Now, you're not
17 going to have to take my word for the years that these
18 things came out. You'll see the documentary evidence that
19 we sold first Broetje metal sets in 2004.

20 You will see a document prepared by F2C2 called
21 history of cassettes or historique cassettes, and it's
22 filled with photographs and text concerning the development
23 of their product over 15 years plus. This, you'll notice,
24 is the 2002 Generation 4 product.

25 As you'll notice, this is the metal box prepare

1 (indicating), I'm sorry, the plastic box that we just looked
2 at. This is what they were selling us in the early 2000s
3 that we were then incorporating into our gigantic machines
4 and reselling to companies like Boeing and Airbus.

5 This, then, is a few pages forward in that
6 document that you'll see, and now in 2005 we have Generation
7 5, and now we have the metal box.

8 So let's go to the specific legal claims that
9 are involved in the case. There are the two basic claims,
10 trade dress, which takes up all the unfair competition,
11 interference with respect to economic advantage, ideas,
12 and the second theory is the patents. So as I said, the
13 trade dress and unfair competition claims are about the
14 work of the cassette, and the patent case is about how it
15 works.

16 So you've probably heard the word "trademark" no
17 doubt. You may not have heard the word "trade dress" before
18 this case. They're very similar concepts. They're the name
19 of a manufacturer. That tells you where the product comes
20 from: Coca-Cola, Pepsi. Those names are trademarks, but
21 the way their products look, if the look can communicate to
22 you who the manufacturer is, that's trade dress.

23 So you look at the Pepsi and Coke cans. You see
24 a red can with a white swoosh. You know that's a Coke can
25 even without the words Coca-Cola being there. Likewise, you

1 can see the Pepsi can. The word "Pepsi" doesn't need to be
2 there. The blue and the red, white and blue circle tells
3 you that's Pepsi. That's trade dress.

4 So the plaintiffs say that our customers are
5 confused because they think that they are buying F2C2
6 cassettes because they think the two metal boxes like alike.
7 The evidence is going to show that's not true. As I
8 mentioned several times now, we used the metal box first.
9 They only sold a plastic box before. There's no reason that
10 airplane manufacturers would associate a metal box with
11 F2C2. They hadn't sold one to them. Only we had.

12 Something else that the evidence will show you
13 is that we tell our customers in writing who the
14 manufacturer is of our Broetje brand cassettes. This is a
15 delivery note showing the importation into the United States
16 of in the Netkaseten cassette or rivet cassettes. This is
17 one of the first shipments in 2004. This is to Vought in
18 Dallas. It specifically tells them that Broetje Automation
19 is the manufacturer of these cassettes and that they're made
20 in Germany. Likewise, as I mentioned, the brand names of
21 the companies are on these cassettes. Ours say Broetje.
22 Theirs say F2C2.

23 Now, something to think about is who the
24 customers are. The evidence is going to show these are
25 incredibly sophisticated customers. They make airplanes.

1 They're concerned about what the products are going into the
2 airplanes. They are concerned with the machines that build
3 them. They don't want these things to fall out of the sky.
4 They're regulated. They're incredibly demanding. They
5 purchase our machines through a very complicated
6 specification process. They don't pick these cassettes off
7 a shelf and are not likely to confuse them because they're
8 sitting side by side. This doesn't happen. These things
9 are built to order after the specification has been sent out
10 by the manufacturers and we have won the bid.

11 Now, there's one, there are two other things to
12 think about with regard to trade dress. What you will learn
13 is that you are not allowed to use the idea of trade dress
14 to basically get a monopoly over something that's
15 functional. And the problem with the so-called trade dress
16 that they point to, the metal box that they say is their
17 trade dress, is, it's all functional.

18 What is the purpose of the transparent lid? So
19 you can see inside and see the tube, and see if it's still
20 full with rivets or if there's a jam, you can see where the
21 jam is. It has a handle. The purpose of the handle is to
22 be able to carry this thing around like a suitcase or to
23 slide it in and out of the racks that it has to go into.

24 What's the purpose of the metal is to make
25 it more sturdy than the old plastic used to be, because

1 that would crack and things would pull in and out of the
2 racks.

3 What's the purpose of these two things in the
4 back? These are the engagements where it slides into the
5 rack. The air comes in here and the rivets go out there.
6 These things slide into a rack. If these things were in
7 different places, they wouldn't fit into the openings.

8 Lastly, for trade dress, as I said, the way the
9 product looked has to communicate to people who the
10 manufacturer is. That is called secondary meaning. The
11 public associates the way something looks, who the
12 manufacturer is. That can only be acquired over time, a
13 product configuration, the way a product looks. As I
14 mentioned, we sold our metal cassette first, so there's no
15 way that secondary meaning for a metal box would have
16 developed with regard to F2C2 when they didn't sell the
17 metal box until we started selling the metal boxes.

18 So for all of these reasons, when we're done
19 this trial, I'm going to ask you to return a verdict of no
20 trade dress infringement for my client.

21 Now, there's a second part of the case, the
22 patent case, and that's about how the cassettes work. So as
23 I mentioned, the AHG patents have these tubes that manage to
24 get air down the full length of the tube to reach the first
25 rivet. As I mentioned, my client has the soft pentagonal

1 tubes. This is a further example of this, this idea of
2 substantially -- some of the elements of the claims require
3 that the rivet heads be substantially equal to the area of
4 the internal cross-section of the tube. And this image on
5 the right (indicating) is what a rivet looked like sitting
6 inside of one of my client's tubes. They're not
7 substantially equal in area to the inside of the tube.

8 There's no place where what you will hear F2C2
9 say are the grooves or passageways five points. There's
10 nowhere that those points open into the hollow center. They
11 are already part of a hollow center. As I mentioned, the
12 axes of the rivets are supposed to be in line with the axis
13 of the tube. That isn't true with my client's product
14 because you see that the axis of the tube goes that way and
15 the axes of the rivets zig-zag along that way.

16 Now, in 2003, when my client was undertaking its
17 development of this product, they knew that there were a lot
18 of patents out there and they specifically knew about the
19 AHG patents. So personnel at Broetje automation in Germany
20 called the head patent lawyer at their parent company CLAAS.
21 That's Dr. Steffen Budach. You will hear his testimony.
22 He's here in the courtroom today. And you will see the
23 documents that show we purposely changed our product so we
24 wouldn't infringe their patents.

25 In 2003, in November, a request was sent to a

1 third-party tube manufacturer in Germany saying, can you
2 manufacture a tube like this for us (indicating), a circular
3 tube that has grooves in the sides. A few weeks later
4 there's another letter to the same tube manufacturer saying,
5 no, no, no. Stop. We don't want that tube after all. We
6 want this tube. We want this soft pentagon tube.

7 So what happened in the meantime? Dr. Budach
8 told them you cannot order this tube. This thing might
9 infringe their patent, which calls for grooves and
10 passageways along the walls. Use this. This does not
11 have grooves and passageways, he told them. And what do
12 they do? They rejected that design and they adopted the
13 soft pentagon. So that got used in the product that was
14 released in 2004, the soft pentagon.

15 In 2005, you saw part of Dr. Budach's response
16 in 2005, when my company followed up again to double-check
17 with Dr. Budach. In 2005, my client got that threatening
18 letter from F2C2 and AHG saying, stop all of your
19 infringement.

20 So they said, we should check with Dr. Budach
21 again and they did. They sent him a message. And they
22 showed him these two shapes. There's a third. You'll see
23 that one, but these are the two main ones.

24 They said, this is what F2C2's tube looks like.
25 This is the one that we have been using. Is it all right if

1 we continue using this because we've just been accused of
2 infringement.

3 And Dr. Budach wrote back and he said, yes. It
4 is safe to continue using this (indicating). The portion of
5 the e-mail back from Dr. Budach that Mr. Lindvall showed you
6 was on page 2 of the e-mail. On page of the e-mail, you
7 will see his advice saying, no. Use this. It doesn't
8 infringe.

9 And so what happened after that? You saw from
10 the time, the timing chart that Mr. Lindvall put up that
11 they sued us in Germany. And what happened there? We won.
12 In the lower court, three Judges found that we did not
13 infringe their European patent. And that was appealed and
14 that was affirmed. And my client also filed a separate
15 lawsuit in the German Patent Court, asking the German Patent
16 Court to declare their European patent invalid. A few
17 months ago, that's what they did. The European patent has
18 been declared invalid in Germany. Now, of course, that, of
19 course, validates what Dr. Budach told my client. Use that
20 shape of a tube. It won't infringe.

21 Now, as Mr. Lindvall mentioned, they also sued
22 us in France. What happened in France? Mr. Lindvall
23 mentioned that recently, they won. That's true in some
24 respects, but they lost first. It was the appellate court
25 that recently ruled in their favor.

1 At the trial court level, my client won. The
2 patents were found invalid. And significantly this issue
3 about whatever kind of a contract might have been entered
4 into in 1994, they sued us for improperly terminating a
5 contract under French law and we won. The Court
6 specifically found that my client did not breach any
7 contractual obligations either to AHG or to F2C2. And what
8 about this French Appellate Court judgment they are talking
9 about? They affirmed that.

10 MR. LINDVALL: Your Honor, I'm sorry. I have to
11 object.

12 THE COURT: Do you want to have a sidebar?

13 MR. LINDVALL: They mentioned about breach.

14 (Sidebar conference held out of the hearing of
15 the jury as follows.)

16 THE COURT: You'll have to speak loudly. They
17 can't hear us.

18 MR. KELLEHER: Yes.

19 THE COURT: I think the objection is, we weren't
20 going to be talking about any suggestion of breach and now
21 you've told them there isn't a breach.

22 MR. KELLEHER: The motion in limine ruling was
23 that they were not allowed to suggest that we were in
24 breach. He has been suggesting, I'm afraid all the way
25 through his opening, there were provisions of his contract

1 that we were not allowed to use their confidential
2 information for anything, that supposedly apparently we're
3 in violation of that.

4 THE COURT: Are you telling me you thought that
5 he violated my order in his opening?

6 MR. KELLEHER: I think he did, Your Honor.

7 THE COURT: You didn't bring that up with me,
8 did you?

9 MR. KELLEHER: I'm trying to cure it now.

10 THE COURT: You think -- hold on. Do you think
11 what you have just done is consistent with my ruling that
12 the jury was not to hear any suggestion of breach?

13 MR. KELLEHER: Yes, Your Honor. I do think it
14 is.

15 THE COURT: All right. How is you putting
16 breach explicitly in front of the jury consistent with my
17 ruling?

18 MR. KELLEHER: I will explain it this way, Your
19 Honor. I understood the ruling as being they, we filed a
20 motion saying they should not be permitted to suggest that
21 we breached. I don't believe the ruling said that we were
22 not allowed to discuss it if they raise an issue.

23 THE COURT: Well, certainly, I take it, you have
24 no objection at this point. Breach is out and they have a
25 chance to respond and present whatever evidence they want

1 about breach. That's your position, I take it?

2 MR. KELLEHER: I suppose that's fair, Your
3 Honor.

4 THE COURT: Do you have an issue? I mean --

5 MR. LINDVALL: He has opened the door.

6 THE COURT: We're now all in agreement, they've
7 opened the door.

8 MR. LINDVALL: Yes.

9 THE COURT: I mean, not that we can do anything
10 now. I'm surprised you didn't come talk to me first
11 about -- hold on. I will give you a chance to talk.

12 I mean, if you thought that they violated my
13 order, and certainly my eyebrows were lifted a couple times,
14 but there was no objection. There was no request for a
15 sidebar. I think he was trying to be careful. Arguably, he
16 may have gone over the line. We'll never know. But I am
17 surprised that you wouldn't come talk to me first before
18 really kind of walking indisputably across the line that you
19 have drawn. But your response?

20 MR. KELLEHER: I want to apologize, Your Honor.
21 I honestly went against your expectations. I thought I was
22 staying within the lines. I am wrong, obviously.

23 THE COURT: Anything else you want to say?

24 MR. LINDVALL: No, Your Honor. He has opened
25 the door.

1 THE COURT: Yes. The door is open.

2 MR. LINDVALL: Thank you.

3 (End of side bar conference.)

4 THE COURT: You may continue.

5 MR. KELLEHER: Thank you very much, Your Honor.

6 And the decisions of the French Appellate Court
7 are now on appeal to the French Supreme Court. Some day
8 we'll have the final answer, but it won't be unfortunately
9 while this trial is going on.

10 So the last issue I want to touch on is this
11 idea about whether the patents are valid or not. You heard
12 the testimony the prior art a few times during the video and
13 during the Judge's instructions. And the idea here is that
14 you're not allowed to take away from the public something
15 that's already in the public domain, so you can't get a
16 patent unless something is new. If someone has already done
17 it, it's not new. And even if it's new, no one has done the
18 exact same thing, it's only a tiny bit different from what
19 went before such that that leap would be obvious. You are
20 not supposed to get a patent for that reason and I think the
21 evidence will show that what they say is their invention
22 actually wasn't new and was in fact obvious.

23 So you've seen this one. This is the Shinjo-
24 Komaki patent application. This is the language that I
25 pointed to earlier in my discussion here, that these

1 disclosed the exact same invention with regard to their
2 patents that they filed eight years later.

3 This is the Brosene stud feeding mechanism,
4 which discloses essentially rivets going into a tube inside
5 a cassette, and this is in the 1960s.

6 You're going to see a few other patents, pieces
7 of prior art during this case. This is a patent called
8 Minbiole from 1972 and it involves conveying and treating
9 pieces through tubes that have these various intricate
10 grooves and passageways carved into the side. And so you'll
11 see that people were using things carved into the sideways,
12 the sides of tubes to help propel things to them decades
13 before the inventors came up with it here.

14 This is another patent that you'll see, a patent
15 called Mauer. This is a rivet/stud feeder using intricate
16 shapes for feeding rivets. We have an octagon here and a
17 pie shape here.

18 So, ladies and gentlemen, at the end of the
19 case, just as I ask you to return a verdict of no liability
20 with regard to the trade dress, I'm going to ask you to
21 return a verdict of no patent infringement, no willful
22 infringement and no damages whatsoever in favor of my
23 client. Thank you very much.

24 THE COURT: Thank you.

25 Turn to plaintiff to call their first witness.

1 MR. HOROWITZ: Your Honor, at this time, the
2 plaintiff calls Philippe Bornes.

3 THE COURT: Okay. I'm sorry. Is he going to
4 have a translator help him?

5 MR. HOROWITZ: Your Honor, he's going to have a
6 translator next to him. We're going to try and do it in
7 English, but just in case.

8 THE COURT: I think we may need the assistance
9 already of the translator.

10 Go ahead.

11 MR. HOROWITZ: May I approach?

12 DEPUTY CLERK: Shall I swear the interpreter
13 also, Your Honor?

14 THE COURT: Counsel, do you want us to swear the
15 interpreter?

16 MR. KELLEHER: I think we should, Your Honor.

17 THE COURT: Okay. Any objection to that?

18 MR. HOROWITZ: No objection, Your Honor.

19 THE COURT: All right.

20 (BEATRICE BEER, Interpreter, sworn.)

21 ... PHILLIPPE BORNES, having been duly sworn as
22 a witness, was examined and testified as follows ...

23 THE COURT: Thank you, Mr. Bornes. Welcome.
24 You may pass out the binders.

25 MR. HOROWITZ: Thank you, Your Honor.

Bornes - direct

1 (Binders handed to the Court and the witness.)

2 MR. HOROWITZ: And, Your Honor, per your
3 pretrial instructions, may I briefly make a statement about
4 who Mr. Bornes is?

5 THE COURT: You may.

6 MR. HOROWITZ: Although it follows very briefly
7 on what Mr. Lindvall told you in his opening remarks, this
8 is Philippe Bornes. He's a co-inventor of the patents that
9 we're going to be talking to you about over the next few
10 days.

11 He was the technical manager and the head of
12 research and development at that company called AHG and then
13 he was the general manager. He really started and ran this
14 company F2C2, which was responsible for the rivet feed
15 distribution system that Mr. Lindvall and Mr. Kelleher
16 showed you in their opening statements.

17 DIRECT EXAMINATION

18 BY MR. HOROWITZ:

19 Q. Mr. Bornes, where do you live?

20 A. I live in France.

21 Q. And is French your native language?

22 A. Yes.

23 Q. Will you do your best during your testimony, are you
24 going to try to do this in English?

25 A. Yes.

Bornes - direct

1 Q. And are you married, sir?

2 A. Yes.

3 Q. How long have you been married?

4 A. For 40 years.

5 Q. Do you have any kids?

6 A. Yes. I've got seven kids.

7 Q. What about grandchildren?

8 A. And also seven grandchildren.

9 Q. Could you tell us about your educational background?

10 A. Yes. I am French engineer. I have been, graduated
11 from one of the top ten engineering schools in France. The
12 name of this school is Ensta, E-n-s-t-a.

13 Q. Are you currently working or employed?

14 A. No. I am retired now.

15 Q. When did you retire?

16 A. Last October, 2013.

17 Q. What was your job before you retired?

18 A. Just before, I was working for a company named
19 LATecis in France and I was project manager there.

20 Q. Tell the jury what LATecis -- I'm probably not
21 pronouncing that correctly. I'll do my best. But tell me
22 what that company is?

23 A. So it's a subsidiary of Latecoere, who is a company
24 in France which manufactures parts of planes and also some
25 studies, and in LATecis, I was mainly working on manufacturing

Bornes - direct

1 engineering tools for aircraft components for doing
2 transport of jets, or to manufacture planes.

3 Q. It's involved in the aerospace industry?

4 A. Yes.

5 Q. And in what years did you work there?

6 A. I worked there from 2007 until 2012.

7 Q. Before LATecis, where did you work?

8 A. I was working at AHG.

9 Q. And AHG, were you working at AHG when you went to
10 LATecis, or were you working at F2C2?

11 A. Excuse me, yes. Before, I just work for F2C2, and
12 then AHG before.

13 Q. So just make it clear for the jury, which did you
14 work for first, AHG or F2C2?

15 A. I work first for AHG, then F2C2.

16 Q. Okay. I want to talk to you about F2C2 first and
17 work backwards a little bit. Okay?

18 A. Okay.

19 Q. What years did you work at F2C2?

20 A. I worked there from 2001 to 2007.

21 Q. What is F2C2, and why was it created?

22 A. F2C2 in fact is company that we have created from
23 AHG. It's a subsidiary from AHG. And, in fact, when we
24 were manufacturing the cassette rivet system, it's the
25 manufacturing some machines and, in fact, AHG was involved

Bornes - direct

1 in rivet manufacturing, so we decided to make F2C2 to rivets
2 only in the way to make, sell, and promote the cassette
3 system.

4 Q. What is a rivet? I think the jury probably knows at
5 this point, but just explain it to us in your own ...

6 A. So a rivet is a part of metal with a head and a tail.
7 And when you put it on two parts of the plane, you dig a
8 hole. You put the rivet inside the hole and then you
9 squeeze it tight, and then the two parts are assembled.

10 Q. It holds the plane together?

11 A. Yes, a lot of them.

12 Q. Who created F2C2?

13 A. So F2C2 has been created by Jean-Marc Auriol, my
14 father-in-law. AHG and me.

15 Q. How many employees did F2C2 have when you worked
16 there from 2001 to 2007?

17 A. It's a small company. We were four to five people
18 there.

19 Q. Who owns F2C2?

20 A. AHG.

21 Q. And who owns AHG?

22 A. AHG is owned by my father-in-law, Jean-Marc Auriol,
23 and his family, his wife and his son -- and children.

24 Q. What did you do at F2C2? What was your role there?

25 A. I was general manager for F2C2.

Bornes - direct

1 Q. Explain to the jury what that meant to be the general
2 manager of F2C2.

3 A. Yes. You know, it was a small company so I was
4 involved in the techniques, also with the customer
5 relations, and also from time to time also I went to
6 customer to sell machines.

7 Q. Now, you said before F2C2 you worked at AHG. I want
8 to talk to you a little bit about AHG now. Okay?

9 A. Yes.

10 Q. Okay. First of all, help us out. What is the name
11 of the full French name of AHG. Could you say it for us?

12 A. AHG stand for Ateliers De La Haute-Garonne.

13 Q. And we're going to call it AHG. That's what we're
14 talking about; right?

15 A. Yes.

16 Q. And what is AHG?

17 A. AHG is the family company. It's family owned by my
18 father-in-law, his wife and children.

19 Q. Are all of the owners and operators of AHG and F2C2
20 family members of Jean-Marc Auriol?

21 A. Yes.

22 Q. And he was your father-in-law or is your
23 father-in-law?

24 A. Yes.

25 Q. Okay. And who is the head of AHG?

Bornes - direct

1 A. Jean-Marc Auriol.

2 Q. Who else from the Auriol family is involved with AHG?

3 A. His wife and all his children.

4 Q. When did -- all his children?

5 A. Yes.

6 Q. When did you start working at AHG?

7 A. So, in fact, I met my wife when I was in engineer
8 school, and then we get married. And we got our first
9 children 15 days after graduation. And because I wanted to
10 work in the aircraft company, it was natural for me to work
11 with my father-in-law.

12 Q. Did you go straight to work for your father-in-law
13 when you finished engineering school?

14 A. Yes.

15 Q. Do you remember what year that was?

16 A. It was in July of 1975.

17 Q. And what was AHG's business?

18 A. It sold rivets, mainly.

19 Q. Who did they manufacture rivets for? What industry?

20 A. It's got cold forging. It's using what we call
21 heaters. It's a press which are manufacturing this for us.

22 Q. But what are the rivets used for? Where did they put
23 the rivets when they're made? What industry?

24 (Translator and witness confer.)

25 A. Yes, they are using aircraft industry. Excuse me.

Bornes - direct

1 Q. And how long did you work at AHG before you began
2 work at F2C2 in 2001?

3 A. 26 years.

4 Q. And over those 26 years, I'm sure you didn't have the
5 same exact job, but can you give the jury a sense of what
6 your role was at AHG?

7 A. So at the beginning, as I told you, this industry is
8 using cold heater roll, and this work is not very well
9 known. So, in fact, the first work I was to do was to see
10 the machine manufacturers to collect what is best way to set
11 the machine to make them work. And then I came back to AHG,
12 and there I teach people best way to set these type of
13 machine.

14 Q. Who were some of AHG's customers for these rivets,
15 these airplane rivets?

16 A. Mainly worldwide, the aircraft manufacturers.

17 Q. Can you give us a sense of names of some of the
18 companies?

19 A. Yes. So in France, you have Airbus, Dassault. In
20 the United States, you have Boeing, Lockheed. Almost all of
21 them. Northrop and so on.

22 Q. I'm sorry. Were you finished?

23 A. Yes. In Brazil, Embraer. There was customers all
24 over the world.

25 Q. I think you said this but I wasn't sure. Was some of

Bornes - direct

1 the customers in the United States?

2 A. Yes. Boeing, Northrop, Lockheed. Spirit was Boeing
3 before. Almost all of them.

4 Q. And during your 30 year plus career in the airplane
5 industry and the riveting industry, were you ever named as
6 an inventor on any patents?

7 A. Yes. I have got more than 50 patents.

8 Q. What area of technology do most of your patents
9 relate to?

10 A. So they are relating to rivets, cassette delivery
11 systems and tools.

12 Q. Now, you have a binder in front of you. I've
13 provided one to counsel in court as well with some exhibits,
14 so I'm going to ask you now to open the binder. We're going
15 to go through some of these together.

16 Could you turn to JTX-1 and JTX-2 in your
17 binder?

18 A. (Witness complies.)

19 Q. Okay. Could you tell us what JTX-1 and JTX-2 are?

20 A. They are the two patents that we got for the cassette
21 system.

22 Q. Are these the '216 and '339 patents?

23 A. Yes.

24 Q. Who are the inventors on these patents?

25 A. It was Jean-Marc Auriol and me.

Bornes - direct

1 Q. And who owns these patents?

2 A. AHG.

3 MR. HOROWITZ: Your Honor, at this time I would
4 offer into evidence JTX-1 and JTX-2.

5 THE COURT: Any objection?

6 MR. KELLEHER: No objection.

7 THE COURT: They are both admitted.

8 (PTX-1 and PTX-2 are admitted into evidence.)

9 BY MR. HOROWITZ:

10 Q. Mr. Bornes, if you could tell us generally what does
11 the invention cover in these patents?

12 A. So these patents are made of the coiled tube which
13 have some groove inside to make sure that even if the coil
14 is complete with rivet inside, the air would be able to flow
15 all around the rivets and making the same pressure all along
16 all the rivets so the first one is able to move and through
17 the tube.

18 And also there is two stoppers, meaning to make
19 sure that no rivet can go out of them or in them.

20 Q. Okay. Let me break that down a little bit. You said
21 that there is tubes with grooves; is that right?

22 A. Yes.

23 Q. And the grooves allow the air to flow through and
24 push all the rivets?

25 A. Yes.

Bornes - direct

1 Q. Okay. And just to be clear, if the air can't get
2 through the tube, what happens to the rivets?

3 A. If you, you have no way to make sure that the air
4 will go on all the rivets, you will try to push the rivet by
5 the last one. So you can increase the pressure and it will
6 go anywhere around the tube. The tube will increase but
7 they won't circulate inside.

8 Q. And then I think you mentioned the other piece being
9 stop members.

10 A. Yes.

11 Q. What is the point of these stop members?

12 A. It's to make sure what you have done when you stop
13 rivets, you put them in the tube, you don't want them to
14 fall out, and you don't want to have some going back inside.

15 Q. And just briefly, let's show the jury. If you could
16 turn to JTX-1.2, the second page.

17 A. Yes.

18 Q. And tell us, what is in Figure 1 or what is
19 represented in Figure 1 of the patent?

20 A. So in Figure 1, you can see the tube with a lot of
21 rivets inside. There is the groove which is called 2b.

22 Q. So the groove is labeled 2b?

23 A. Yes. So this is a way for the air to go from the
24 bottom of the tube to the top of the tube in that case, and
25 then you have the rivet inside and you have both sides of

Bornes - direct

1 the tube, the stoppers.

2 Q. Now, what is your understanding of the purpose of
3 drawings or figures or pictures like this in a patent?

4 A. It's to show the principle of the patent.

5 Q. To show the principle of the patent?

6 A. Yes.

7 Q. Let's look at Figure 2 on JTX-1.2. I think this was
8 shown in opening statement.

9 Could you tell us what is shown here in Figure
10 2?

11 A. Yes. So this shows the section, cross-section of the
12 tube. You can see the tube with the internal shape with
13 three grooves. This is groove 2b which will allow the air
14 to flow around the rivet inside, and you can see a rivet
15 inside the tube.

16 Q. And, again, is this just an illustration of a
17 principle that you developed?

18 A. Yes, but that doesn't mean all the measure of the one
19 we have to use.

20 Q. When you came up with this invention -- you can take
21 this down, Joe -- was there a problem in the industry that
22 you had become aware of and that you were trying, you and
23 Jean-Marc Auriol were trying to solve when you came up with
24 this?

25 A. Yes. In fact, the problem was that we have a lot

Bornes - direct

1 of problems with the feed system of the riveting machine and
2 we wanted to work on that point.

3 Q. Turn in your binder to PDTX-12.

4 A. (Witness complies.)

5 Q. Are you there?

6 A. Yes.

7 Q. Okay. Do you recognize PDTX-12?

8 A. Yes. That's the bowl. It's one of the two type of
9 systems which were used at that time. This bowl.

10 Q. And would this help you explain to the jury the
11 problem that you were trying to solve?

12 A. The problem was before we invent this tube, the
13 feeding system was linked, directly linked. That means you
14 have just like the feed of the machine and there was some
15 rivets inside. Well, you can see that some other false
16 brother could fall down, and this would directly send the
17 rivet to the rivet -- to the riveter.

18 Q. Is this what would be called an open system?

19 A. Yes.

20 Q. Okay.

21 A. Yes. And, you know, we could have some product in
22 inside directly coming from the batch of rivets that you put
23 inside.

24 Q. Let me pause there for a second. False brother, you
25 have said that a couple times now. I just want to make sure

Bornes - direct

1 what folks understand. Is that another way of saying the
2 wrong size or type of rivet?

3 A. Yes. That's it.

4 Q. So mixing in something that is incorrect into the
5 hopper?

6 A. Yes, or bowl, or even a screw or anything.

7 Q. And what is the problem that can happen if you have a
8 false brother or the wrong size rivet in or the wrong type
9 of rivet or screw? What can happen?

10 A. It's the first should be the successful brother. You
11 have seen the big machine that Broetje are doing. Direct
12 from the fit system to the head riveter, you have 45 meter
13 on tube. So when you send one of this fastener rivet inside
14 the tube, if it goes somewhere, you will need to know where
15 it is and find a way to put it out of that because if it is
16 blocking because it is not a good size, it's not so easy to
17 put them out. So that means a lot of downtime on the
18 machine. But it's not worse.

19 The worse is if the fastener is not a good one
20 is sent up to the riveter and the riveter try to squeeze it,
21 in that case you can have false assembly so you can damage a
22 panel or you have some problem with safety because you don't
23 have the good strength. So this could be a very big
24 problem.

25 Q. And had you spoken to people in the industry about

Bornes - direct

1 these problems?

2 A. Yes.

3 Q. How long did it take you and Jean-Marc to do the work
4 that led to your solution that ultimately was the patent?

5 A. Two to three years.

6 Q. And when? What years did you do that work?

7 A. It was the mid-80s.

8 Q. The mid-1980s?

9 A. Yes.

10 Q. And what year did you first apply for the patents on
11 your invention?

12 A. It was in 1988.

13 Q. And why, Mr. Bornes, did you file for a patent on
14 your invention?

15 A. Because it is our work to make this working, and we
16 wanted to be recognized as being the inventor of this
17 product and also we want to be protected.

18 Q. To be protected?

19 A. Yes.

20 Q. Did there come a time when you and Mr. Auriol and
21 AHG -- and were you still at AHG when you first developed
22 this?

23 A. Yes.

24 Q. Okay. Did there come a time when you commercialized
25 and sold a product that contained your invention?

Bornes - direct

1 A. Yes. It was in 1991.

2 Q. Okay. Let's take a look in your binder at PTX-152.

3 A. (Witness complies.)

4 Q. Could you tell us what PTX-152 is?

5 A. It's a commercial brochure that we have done for the
6 cassette system.

7 MR. HOROWITZ: Your Honor, I would offer into
8 evidence PTX-152.

9 MR. KELLEHER: No objection.

10 THE COURT: It's admitted.

11 (PTX-152 admitted into evidence.)

12 BY MR. HOROWITZ:

13 Q. Who is the intended audience for PTX-152, this
14 document entitled The Distribution System Presentation.

15 A. This is all customers like airplane manufacturers or
16 companies like Broetje.

17 Q. Potential customers?

18 A. Customers, yes.

19 Q. Let's turn to PTX-152.5. The fifth page. It's
20 entitled Production Figures at the top. Do you see that?

21 A. Yes.

22 Q. Okay. Could you tell us and tell the jury what is
23 shown here?

24 A. So here you can see our cassette system. The
25 cassette system is made from three components.

Bornes - direct

1 So the first component is the rack we can say.

2 So the rack is the place where the cassette, when they are
3 plug in, and then from the cassette we can send to the head
4 riveter, and you can have the rivet you want.

5 Q. What is the next component?

6 A. And then you have the loading station. To be able to
7 be plugged on the rack, the cassette needs to be filled with
8 the rivet we want to use. So in this machine, we are taking
9 the rivet, and then we place them into the cassette.

10 And then the third one is the cassette. It's a
11 part of the system containing our patented tube.

12 Q. Did you say it was the heart of this system?

13 A. Excuse me? Yes, the heart of our system.

14 Q. What did you mean by that?

15 A. Because the system won't work without cassette. It's
16 really where we put the invention, and the station is a part
17 of the system which is needed to be able to work with the
18 cassettes.

19 Q. And is the cassette the part of the three piece
20 system that contains the patented tube?

21 A. Yes.

22 Q. How many grooves are in the tube that you chose to
23 use in this system?

24 A. With this cassette, the tube is using five grooves
25 which are on the top of the pentagon.

Bornes - direct

1 Q. And how did you go about figuring out that you wanted
2 to use five grooves in the shape of a pentagon in your tube?

3 A. It depend on the test we have done because we need --
4 at the beginning, we did not have enough sales. We need
5 enough tube to provide the tube with complete tube with
6 shape inside. So what we have to do is take a tube with
7 the circular shape and then we manufacture some tubes to be
8 able to make the groove by putting the material out. And
9 when we make that, it was the best way to do it. So we go
10 on with this five tube.

11 Q. Did it involve testing? I'm sorry. Was this testing
12 that you were describing?

13 A. Yes.

14 Q. Let me show you another exhibit.

15 MR. HOROWITZ: Your Honor, may I approach?

16 THE COURT: You may.

17 BY MR. HOROWITZ:

18 Q. Mr. Bornes, I have just handed you PTX-178. Do you
19 recognize that collection of tubes right there?

20 A. Yes. That is some part of our tube.

21 Q. Are these your patented tubes?

22 A. Yes.

23 Q. Samples?

24 A. Yes.

25 MR. HOROWITZ: Your Honor, at this time I would

Bornes - direct

1 offer PTX-178 in evidence.

2 MR. KELLEHER: No objection.

3 THE COURT: It's admitted.

4 (PTX-178 admitted into evidence.)

5 BY MR. HOROWITZ:

6 Q. Rather than hand out the tubes, at least for now, why
7 don't we turn in your bind to PDTX-13? Take your time.

8 A. (Witness complies.)

9 Q. Do you recognize what is shown in PDTX-13?

10 A. Yes.

11 Q. Can you tell us what this is?

12 A. That is a cut of our tube where we can see the five
13 grooves and the pentagon shape.

14 Q. So just to be clear, this is a cross-section of your
15 tube?

16 A. Yes.

17 Q. And what is the shape of the cross-section of your
18 tube?

19 A. You can see that is a pentagon with the five ends.

20 Q. Pentagon shape?

21 A. Yes.

22 MR. HOROWITZ: Your Honor, are we going to go
23 until 4:30?

24 THE COURT: We're going to go a few more
25 minutes, yes. 4:30.

Bornes - direct

1 MR. HOROWITZ: I just want to gauge my modules
2 here.

3 BY MR. HOROWITZ:

4 Q. I want to talk to you about when these systems are
5 sold. Okay?

6 A. Yes.

7 Q. When a system is sold, how is it sold? The three
8 components.

9 A. You need three components to be able to have complete
10 system. So we always sell at least one rack, one loading
11 station, and cassettes. It's the only way to be able to
12 make it work.

13 Q. So they're all sold together, the cassette, the rack,
14 the loading station?

15 A. Yes, it's a complete system.

16 Q. Could you turn to in your binder back to PTX-152,
17 which is already in evidence. And PTX-152.7 in particular.

18 A. Yes.

19 Q. And when you get there, could you tell us what is
20 shown on PTX-152.7?

21 A. Yes, it's a logo of our customers.

22 Q. And are those all examples of customers of AHG and
23 F2C2?

24 A. Yes.

25 Q. Which ones are -- I should ask you, are any of these

Bornes - direct

1 customers in the United States?

2 A. Yes.

3 Q. Can you give us a few examples?

4 A. Yes. You have Boeing and you have Spirit. And you
5 have also Gemcor and Kuka.

6 Q. Turn in your binder to PTX-150 and 151.

7 A. Yes.

8 Q. And we can do these together I think. Can you
9 identify PTX-150 and 151 for us and tell us what they?

10 A. Right. They are some files that we give to our
11 customers, or potential customers.

12 MR. HOROWITZ: Your Honor, I would offer into
13 evidence PTX-150 and PTX-151.

14 MR. KELLEHER: No objection.

15 THE COURT: They are both admitted.

16 (PTX-150 and PTX-151 are admitted into evidence.)

17 BY MR. HOROWITZ:

18 Q. Where would you give out flyers like this?

19 A. It was many trade shows, like the Paris air show, Le
20 Bourget, or some shows like A.C. in U.S., like Ohio.

21 Q. Let's slow down a little bit. What is a trade show?

22 A. A trade show is, in fact, a place where people are
23 in the industry, come and see what is new news of their
24 supplier and so on and so forth. So a lot of engineers
25 involved in assembly of planes were coming on these shows.

Bornes - direct

1 Q. And could you give us -- I think you said this but I
2 want to make sure we get it. Could you give us at least one
3 example of a trade show you were just describing?

4 A. So like the air show in Le Bourget which occurs every
5 two years, and Aerofast SAE in states which occur each year.
6 This one is not on the same place, it moving, and it has
7 been at least been in Europe twice or three times.

8 Q. And sometimes the United States?

9 A. Yes. It should be in the United States.

10 Q. And you said SAE. We don't need to know what the
11 initials stand for, but just in general what is SA?

12 A. SA is a big society in U.S. who is involved in
13 automotive and aircraft industry, and they mainly
14 manufacture, build standards, a lot of standards. And they
15 also make papers for engineers.

16 Q. Please turn in your binder to PTX-131.

17 A. (Witness complies.) Yes.

18 Q. Could you identify for us what PTX-131 is?

19 A. Yes. This is one of the paper that has been done for
20 Aerofast.

21 Q. Who is the author of the papers?

22 A. It's Raymond McCann and me.

23 Q. So you are one of the authors?

24 A. Yes.

25 MR. HOROWITZ: Your Honor, I would offer into

Bornes - direct

1 evidence PTX-131.

2 MR. KELLEHER: No objection.

3 THE COURT: It's admitted.

4 (PTX-131 is admitted into evidence.)

5 BY MR. HOROWITZ:

6 Q. What is the title of the paper authored here?

7 A. It's The Modular Cassette Fastener and Delivery
8 System.

9 Q. And was this paper prepared in relation to any of the
10 events that you were just describing, the trade show type of
11 event?

12 A. Yes. It was for the Aerofast in 2000.

13 Q. Was that sponsored by SAE?

14 A. Yes.

15 Q. Could you turn to Figure 2, which I believe is a
16 PTX-131.6 in this paper that you published in relationship
17 to the show?

18 A. Yes.

19 Q. Could you tell us what this is showing?

20 A. This is showing an AHG rack with the cassette inside.

21 Q. Why did you publish a picture of your racks with
22 cassettes inside in a journal article or in a trade show
23 journal article like this?

24 A. It is to promote our system. It goes to a lot of
25 engineers involved in assembly, automatic assembly. We see

1 that. It's a way to show them what we are doing.

2 MR. HOROWITZ: Your Honor, I'm going on to my
3 next module. I don't know if I can do it in two minutes.

4 THE COURT: That's fine. I think it's a good
5 stopping point. Thank you very much.

6 MR. HOROWITZ: Thank you.

7 THE COURT: Ladies and gentlemen of the jury,
8 that completes our first day with you today. Thank you very
9 much for your time today.

10 Tomorrow, please be here in time to begin at
11 9:00 o'clock. We will be able to provide lunch to you.
12 When you come in in the morning, there will be a menu or
13 menus waiting for you. So if you can get here a few minutes
14 to spare, you can figure out what you want for lunch, we'll
15 take care of getting that for you.

16 While you are apart from us, no talking to
17 anybody about the case. Don't do any research related to
18 the case. If there happens to be any media coverage of the
19 case, don't look at it, and we'll wish you a very good night
20 and see you in the morning.

21 (Jury left courtroom.)

22 THE COURT: Mr. Bornes, you may step down.
23 Anyone else is free to go.

24 I just want to talk to counsel for a moment.
25 You can have a seat or head out, whatever the rest of you

1 like.

2 MR. HOROWITZ: Phillippe, you can come down.

3 THE COURT: Where are we on updating the jury
4 instructions and the verdict sheet? I don't know if I gave
5 you a deadline for doing that but I know there have been
6 some decisions. You all should take a look at that I think
7 and see if you reduced any of the disputes. Is that
8 something you thought about doing? And I don't know if I
9 gave you a deadline or not. I don't recall.

10 MR. LINDVALL: Your Honor, I don't believe there
11 is a deadline. We did do lots of meeting and conferring. I
12 thought we reduced it down to a fair amount of. I would say
13 maybe five to ten disputes.

14 THE COURT: So progress has been made?

15 MR. LINDVALL: Yes. But it may be, we're at the
16 point where maybe a charge conference would be useful, not
17 tonight.

18 THE COURT: Sure.

19 MR. LINDVALL: Maybe like Wednesday or something
20 like that.

21 THE COURT: I'm thinking Wednesday.

22 MR. LINDVALL: Okay.

23 THE COURT: But I would like to have a chance to
24 study what the disputes are in advance of that. Could you
25 all get me by the end of the trial day tomorrow an updated

1 version of the jury instructions and the verdict sheet
2 showing me where the remaining disputes are?

3 Take a moment to confer.

4 (Counsel confer.)

5 MR. LINDVALL: Your Honor, I believe Mr. Cahr
6 reminded me you probably have the most recent version with
7 the limited disputes. They should be fairly easily
8 detectable when you review that.

9 THE COURT: I'm sorry. What I already have, you
10 say?

11 MR. LINDVALL: Yes.

12 THE COURT: So there hasn't been any further
13 progress?

14 MR. CAHR: No. Your Honor, you already narrowed
15 it a lot. We met and conferred a number of times, so I think
16 what you have now is a fairly narrow number of substantive
17 issues.

18 THE COURT: All right. Well, I certainly know
19 at least on the equitable tolling question, we talked about
20 that subsequent to your submission. It will be helpful for
21 me for you to take one more pass at looking at it, see if
22 there is anything further that you can resolve before we dig
23 into it, and the same on the verdict sheet for us as well.

24 So could that be done by, say, 5:00 p.m.
25 tomorrow, get a submission to us?

1 MR. CAHR: Sure.

2 MR. LINDVALL: Yes, Your Honor.

3 THE COURT: All right. Figure sometime
4 Wednesday we'll have a prayer conference and we'll discuss
5 whatever those remaining disputes are.

6 Okay. Is that anything else from plaintiffs
7 before we break for the day?

8 MR. LINDVALL: The only question I have, it's
9 probably not a question for you, but the physical exhibits,
10 can these be left in the courtroom or do they have to be
11 taken out?

12 THE COURT: Ask Mr. Golden when I step out. I
13 don't know the answer to that.

14 MR. LINDVALL: Okay. Thank you.

15 THE COURT: Any from defendants?

16 MR. KELLEHER: No, Your Honor.

17 THE COURT: Okay. We'll look you for you at
18 8:30 tomorrow morning.

19 (Proceedings adjourn at 4:32 p.m.)
20

21 I hereby certify the foregoing is a true and accurate
22 transcript from my stenographic notes in the proceeding.

23 /s/ Brian P. Gaffigan
24 Official Court Reporter
25 U.S. District Court